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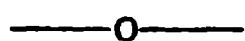
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THE  
LAW MAGAZINE AND REVIEW.

No. CCLXVI.—NOVEMBER, 1887.

# I.—ON INTERNATIONAL CONVENTIONS FOR THE NEUTRALISATION OF TERRITORY AND THEIR APPLICATION TO THE SUEZ CANAL.\*

IT has been remarked by several eminent writers on the Law of Nations that the notion of Neutrality, as a condition of International life, was unknown to the nations of the ancient world, and that neither the Greeks nor the Romans had any word to express the idea. It would, perhaps, have been a safer statement on their part if they had said that the term "neutrality," and the juridical notions which are connected with it in the present day, are essentially modern, for it is rather to the phrase "neutrality," than to the *status* of a neutral, that the character of modernism can be properly said to attach. We can hardly, with reason, assert that the International *status* of neutrality was unknown to the Ancients, when the Roman historian of the war which was carried on in Greece between the Ætolians and the Achæan league, in the early part of the second century before the Christian era, represents the envoy of King Antiochus endeavouring to dissuade the Roman general from siding with either of the belligerent parties in the following words: "Let the Romans, as becomes middle persons, wish peace to either party, but let them not interpose in the war."†

\* A Paper read at the London Conference of the Association for the Reform and Codification of the Law of Nations, July, 1887.

† "*Pacem utrique parti, quod medios decet, optent, bello se non interponant.*"  
—Livii Historia, xxxv. 48.

Grotius, whose treatise on the "Right of War and of Peace" was published for the first time in 1625, considered the expression "middle persons" (*medios*) in the above passage to designate the *status* of neutrals, and himself adopted the Latin word in that sense in a chapter which is headed, *De his, qui in bello medii sunt*—that is, of those who are middle persons in war. A step in advance, as regards the terminology of the science, was made by Bynkershoek, when, in his *Quæstiones Juris Publici*, he has entitled his ninth chapter *De belli statu inter non hostes*, and has described those States, which do not take part in a war between other States, as being of neither party: "*Non hostes appello, qui neutrarum partium sunt.*"\*

Bynkershoek's treatise was published early in the eighteenth century, but between the epoch of Grotius and that of Bynkershoek the Peace of Westphalia had intervened, and the notion of neutrality had meanwhile undergone a considerable development in its application to the territory of a State, as distinguished from the citizens of a State. The Swiss Cantons had observed a prudent neutrality as political bodies during the Thirty Years' War, but their neutrality was qualified by military Capitulations between individual Cantons and foreign Powers, permitting the enrolment of Swiss citizens to serve in the belligerent armies of such Powers. This anomalous condition of International relations, which was a tradition of the Middle Ages, was still maintained after the independence of the Helvetic Confederation had been formally recognised by the leading Powers of Europe, which were parties to the Treaties of Westphalia, and notwithstanding the general recognition of the Confederation as a collective body of

\* It was not until the middle of the eighteenth century that the terms "neutral" and "neutrality" found general acceptance among French and Italian publicists. Galiani deserves especial mention in respect of his Treatise, *De' doveri de' principi neutrali verso i principi guerreggianti e di questi verso i neutrali*. (Naples, 1782.)

States, the neutrality of each Canton remained a matter of particular option, and of an understanding between the respective Cantons and the principal foreign Powers. This neutrality, however, was evidently imperfect, as both France and Austria, whilst recognising the neutral character of the territory of the Confederation, reserved to themselves, by treaty, the right of recruiting Swiss troops to serve in their armies, and to take part in the frequent wars which desolated other portions of Europe during the seventeenth and eighteenth centuries.

To pass over the repeated violations of the neutrality of the territory of the Helvetic Confederation by the French, Russian, and Austrian armies during the early wars which followed the French Revolution of 1789, the internal dissensions of the Cantons furnished a pretext for the First Consul, Bonaparte, to interfere as mediator between the partisans of a Central State and those of a Federal State; and a new Constitution, under the specious title of an Act of Mediation, was imposed by the First Consul on the Confederation, which was followed by a Treaty, negotiated on the 27th September, 1803, by General Ney. Under this Treaty the French Republic undertook to use its good offices to procure the neutrality of Switzerland, and to defend it, if attacked. The Treaty at the same time imposed upon the Confederation the obligation of interdicting to the enemies of France a passage through Swiss territory, and of opposing any such passage by force of arms; and it expressly declared that, as the Treaty was absolutely defensive, it ought not to prejudice nor to derogate in any way from the neutrality of Switzerland. A further stipulation provided that, if the Continental territory of the French Republic should be attacked, the Cantons would allow the French Republic to make a new levy of 8,000 Swiss volunteers, in addition to 16,000 Swiss troops, which the Republic was allowed to



enlist under a Capitulation concluded with the Diet on the same day. It would be unreasonable to describe such a Treaty as a Treaty of neutralisation. It was, in fact, a veiled Treaty of defensive alliance, under which the territory of the Helvetic Confederation was to serve as a so-called neutral bulwark against the enemies of France.

Meanwhile, the fortune of war had declared itself against the Emperor Napoleon, and it became necessary for the Confederate Cantons of Switzerland to reconsider their position. An extraordinary Helvetic Diet was accordingly convened on the 18th November, 1813, and a proclamation was issued by it affirming the Neutrality of Switzerland, and notifying that fact to the Allied Sovereigns. The plenipotentiaries of Austria and Russia, however, declared that they could not respect a neutrality that was only nominal, and an allied Russian and Austrian army, under the command of Field-Marshal Prince Schwarzenberg, passed through the territory of Switzerland, and crossed the Rhine at three different places without opposition from the Federal troops. In fact, a convention had been previously signed on the 20th May, 1814, under which the Cantons consented that the allied forces should pass freely across the territory of the Confederation, and the Confederate troops in a body joined the flag of the Allies as soon as their armies had set foot on Swiss soil (*Prince Metternich's Memoirs*, ch. viii.). It is of importance to bear in mind that the neutrality of Switzerland, which was thus abandoned, was her Common Law neutrality, not a neutrality which had been guaranteed to her by any Treaty with the Allied Powers, or which any of the Allied Powers had bound itself by Treaty to respect.

The Congress of Vienna ushered in a less ambiguous order of things as regards the neutralisation of the territory of the Swiss Confederation. By an Act, signed at Paris on the 20th November, 1815, the plenipotentiaries of Austria,

France, Great Britain, Prussia, and Russia declared their formal recognition of the *perpetual neutrality* of Switzerland, and guaranteed the integrity and inviolability of its territory in its new limits, as fixed, as well by the Act of the Congress of Vienna as by the Treaty of Paris of the same date (20th November, 1815). The aforesaid Powers equally recognised and guaranteed the neutrality of those portions of Savoy designated by the Treaty of Vienna of the 20th May, 1815, and by the Treaty of Paris of the 20th November, 1815, as entitled to enjoy the neutrality of Switzerland in the same manner as if they belonged to it. Further, the Signatory Powers of the Declaration made at Vienna on the 20th March, 1815, respecting the limits of Switzerland, recognised by the aforesaid Act of the 20th November, 1815, that the neutrality and inviolability of Switzerland, and its independence of all foreign influence, was in the true interest of the policy of entire Europe. The Swiss Diet had, by anticipation, promised by an Act signed at Zurich on the 27th May, 1815, to observe faithfully the stipulations contained in the Declaration made at Vienna on the 20th March, 1815.\*

Two special features of interest may be observed in this act of neutralisation, namely, the perpetual neutrality of the Swiss territory is declared to be of interest to the policy of entire Europe; and secondly, the neutrality and inviolability of the Swiss territory are declared to be under the guarantee of all the Signatory Powers. It is obvious that by the phrase "perpetual neutrality" the Signatory Powers intended to sanction a permanent order of things, as far as anything human can be permanent, and that by guaranteeing the integrity and inviolability of the Swiss territory, they bound themselves by a solemn compact to uphold such a permanent order of things, which they

\* The Declaration of the 20th March, 1815, was signed by the plenipotentiaries of Spain, Portugal, and Sweden, in addition to those of the Five Powers.

declared to be of paramount importance to the general welfare of Europe. It follows that the neutral character thus attached to a territory is indelible, except with the consent of all the parties to the compact. Further, that a territory neutralised under such conditions, if it should be transferred from one State to another, will retain its neutral character, has also been affirmed by a subsequent European Treaty, namely, the Treaty of Turin of the 24th March, 1860, under which Treaty Sardinia renounced all her rights to Savoy in favour of France. It is declared in the second Article of this Treaty as follows :

“ It is equally understood that his Majesty the King of Sardinia cannot transfer the neutralised parts of Savoy except upon the conditions upon which he himself possesses them, and that it will appertain to his Majesty the Emperor of the French to come to an understanding on this subject as well with the Powers represented at the Congress of Vienna as with the Helvetic Confederation, and to give to them the guarantees which result from the stipulations referred to in the present article.” The ratifications of this Treaty were exchanged at Turin on the 30th March, 1860; and the Emperor of the French, by an Imperial Decree of the 11th June of the same year, announced that the Treaty would receive its full and entire execution.

Several of the Signatory Powers of the Act of the 20th November, 1815, were inclined to hold that an European Congress should be summoned to take formal cognisance of the cession of the neutralised parts of Savoy to France, and M. Thouvenel, in a circular despatch from the French Foreign Office to the representatives of France at the Courts of the Signatory Powers, bearing date the 20th June, 1860, announced that the Treaty of Turin having received its definitive sanction, the moment had arrived for fulfilling the obligations which the Emperor of the French had assumed, and that his

Imperial Majesty was willing to consecrate the accord of the Powers by a diplomatic Act, which should form a part of the Public Law of Europe. A general impression, however, seems to have prevailed, according to a despatch of the Marquis de Turgot, the French Minister for Foreign Affairs, bearing date the 17th July, 1860, that the period was inopportune for such a Conference, and it was thought sufficient to accept the declaration of France, scrupulously to observe the same obligations which the Treaties had imposed on Sardinia with regard to the neutralised districts.

Similar considerations as to the paramount importance to Europe of the peace of the Low Countries, which were formerly under the dominion of the House of Austria, that they should cease to be the battlefield of Europe, have led to the neutralisation of the Belgian territory, which had formed part of the United Kingdom of the Netherlands as constituted in 1815, and which had separated itself violently from Holland in 1831. By a Treaty signed at London on the 15th November, 1831, to which Great Britain, Austria, France, Prussia, and Russia, on the one part, and Belgium on the other were parties, it was declared (Article VII.) that Belgium within the limits specified in the Treaty should form an independent and *perpetually neutral* State, and it should be bound to observe such neutrality towards all other States; and it was also declared by Article XV. that the Port of Antwerp, in conformity with the stipulations of Article XV. of the Treaty of Paris of the 30th May, 1814, shall continue to be *solely a port of commerce*. Further, Great Britain, Austria, France, Prussia, and Russia, by Article XXV., guaranteed to his Majesty the King of the Belgians the execution of all the Articles of the Treaty. By a further special convention of the 14th December, 1831, in consideration of the political independence as well as the perpetual neutrality guaranteed to Belgium, it was agreed between Great Britain, Austria, Prussia and Russia, and

Belgium, that certain fortresses, which had been constructed or enlarged in Belgium since 1815, should be dismantled, as their maintenance would henceforth become an useless charge. Although the recognition of the neutrality of Belgium by the Five Great Powers was complete under the Treaties above mentioned, the territorial delimitation of Belgium in relation to the Netherlands was not completed before the 19th April, 1839, when a Treaty was signed at London between the Five Powers and the King of the Netherlands, in which was inserted an Article respecting the perpetual neutrality of Belgium, identical with the Article recited in the Treaty of the 15th November, 1831, already mentioned. A Treaty was also signed on the same day between Belgium and the Netherlands, which contained a like Article. On the same day was also signed a Treaty between the Five Powers and Belgium, cancelling the treaty of the 15th November, 1831, and declaring by Article I. that the Articles of the Treaty above mentioned between the Five Powers and the Netherlands, as well as the Articles of the Treaty between Belgium and the Netherlands, are considered as of the same force and value as if they were textually inserted in the Treaty, and that *they are thus placed under the guarantee of the said Powers (et qu'ils se trouvent ainsi placés sous la garantie de leurs dites Majestés)*. It is of the more importance that this Article should not be overlooked, inasmuch as it has been ignored by certain eminent publicists, who have stated that the neutrality of Belgium was recognised afresh by the Treaty of April 19th, 1839, but was not assured by any guaranty.

During the wars which arose between France and Germany in 1870, each of those Powers concluded a separate Treaty with Great Britain, under which it avowed its fixed determination to respect the neutrality of Belgium; and Great Britain undertook that in case either of the Belligerent Powers should violate that neutrality she would

co-operate with the adverse Belligerent to maintain the independence and neutrality of Belgium. These Treaties were to continue in force for twelve months after peace should have been concluded between the belligerent parties, after which time the independence and neutrality of Belgium were to continue to rest as heretofore on Article I. of the Quintuple Treaty of the 19th April, 1839. This latter provision may be regarded as a re-affirmance on the part of the High Contracting parties of their obligation under the Treaty of 1839 to maintain the neutrality of Belgium.

A territory adjoining to Belgium may next claim our attention.

In consequence of the dissolution of the Germanic Confederation of 1815, whereby the Grand Duchy of Luxemburg lost the benefit of the Federal guarantee of its territory, which it had enjoyed as long as the Federal Act of 1815 was in force, a Treaty was concluded at London on the 11th May, 1867, between Great Britain, Austria, Belgium, France, the Netherlands, Prussia and Russia, to which Italy also was a party, with a view to offer a new pledge of security for the maintenance of the general repose. It was declared under Article II. of this treaty, that "the Grand Duchy of Luxemburg within the limits determined by the Act annexed to the treaties of the 19th April, 1839, under the guarantees of the Courts of Great Britain, Austria, France, Prussia and Russia, shall henceforth form a *perpetually neutral* State. It shall be bound to observe the same neutrality towards other States. The High Contracting parties engage themselves to respect the principle of neutrality, stipulated by the present Article. That principle is and remains placed under the sanction of the collective guarantee of the Signatory Powers of the present Treaty with the exception of Belgium, which is itself a neutral State."

It was further provided by Article III. that "the Grand Duchy of Luxemburg being neutralised according to the

terms of the preceding Article, the maintenance or establishment of fortresses in its territory becomes without necessity, as well as without an object. In consequence it is agreed by common accord that the city of Luxemburg, considered in time past from a military point of view as a Federal Fortress, shall cease to be a fortified city. His Majesty the King Grand Duke reserves to himself to maintain in that city the number of troops necessary to provide for the maintenance of good order."

It is observable that in this Treaty there is introduced a provision, which has no place in the Treaty above mentioned, guaranteeing the neutrality of the Helvetic Confederation, nor in the Treaty guaranteeing the neutrality of Belgium, namely, a provision whereby the High Contracting parties engaged themselves in express terms to respect the principle of neutrality stipulated in the Treaty. This form of engagement, however, was not introduced for the first time into this Treaty, whilst it has been adopted in subsequent Treaties of territorial neutralisation, and with good reason. But before we consider the reasonableness of such a provision, it may be convenient to refer to the Treaty in which this form of engagement occurs for the first time. The Treaty in question is an European Treaty, intended to vary the arrangements made by the Congress of Vienna, with the object of maintaining the peace of the Adriatic Sea. I allude to the Treaty of London on the 14th November, 1863, by which Great Britain has renounced her Protectorate over the Seven Ionian Islands and their dependencies, and conjointly with Austria, France, Prussia, and Russia, has recognised their union with the kingdom of Greece. It has been provided in the second Article of this Treaty that the Ionian Islands, after their union with the kingdom of Greece, shall enjoy the advantages of a perpetual neutrality; and a further clause is added: "The High

Contracting parties engage themselves to respect the principle of neutrality stipulated by the present Article.' Greece was not a party to this Treaty, which was in the main an European release to Great Britain of her undertaking to maintain a Protectorate of the Seven Islands, to which she had agreed under treaty-arrangements with Austria, Prussia, and Russia, signed at Paris on the 5th November, 1815, and to which other leading Powers of Europe, including the Ottoman Porte, subsequently acceded. It was further provided by the Treaty of London of the 14th November, 1863, that, in consequence of the neutrality, which the Ionian Islands were henceforth to enjoy, the fortifications constructed in the island of Corfù and its immediate dependencies, having no longer any object, should be demolished. This provision was carried into effect before the island was transferred to Greece. Further, after several conferences in London, in the course of which it was agreed that the advantages of the neutrality established by Article II. of the Treaty of 14th November, 1863, in favour of the Seven Islands, should apply only to the islands of Corfù and Paxo, and their dependencies, a Treaty was concluded on the 29th March, 1864, under which Great Britain, France, and Russia, on the one hand, as the Powers which had guaranteed the independence of the kingdom of Greece, declared, with the assent of Austria and Prussia, that the islands of Corfù and Paxo, with their dependencies, after their union with the kingdom of Greece, should enjoy the advantages of a *perpetual neutrality*, which the King of the Hellenes on his part engaged himself to maintain. The provisions of this Treaty are not so full nor so specific as the provisions of the earlier Treaty of 1863, but there can be no doubt that the Signatory Powers have engaged themselves, under the provisions of this later Treaty, to respect the perpetual neutrality of the islands of Corfù and Paxo equally as they



were bound expressly under the provisions of the earlier Treaty to respect the neutrality of all the Seven Islands.

We may now consider the value of this provision, which, as already mentioned, has been subsequently introduced into the Luxemburg Treaty. There is this difference, however, between the Treaty recognising the perpetual neutrality of Corfù and Paxo, and the Treaty recognising the perpetual neutrality of Luxemburg, that in the latter Treaty there is an additional provision, under which it is declared that the principle of neutrality, which the High Contracting parties have bound themselves to respect, is placed under the collective guaranty of the Signatory Powers, with the exception of Belgium, which is itself a Neutral State.

Luxemburg had been a member of the Germanic Confederation, and under the eleventh article of the Federal Act of the 8th June, 1815, the States of the Confederation had undertaken to defend not merely Germany in its entirety, but each individual State of the Union, in case it should be attacked, and they had guaranteed to one another *mutually* such portions of their possessions as were included within the Confederation. The contention of Prussia would seem, therefore, not to have been unreasonable when she declared that she could only renounce the right of garrisoning the fortress of Luxemburg, provided that the Duchy were permanently neutralised, and the neutralisation placed under an European sanction. Hence the additional provision in the Treaty, that the principle of neutrality, which the High Contracting parties have bound themselves to respect, is placed under the collective guaranty of the Signatory Powers. A question may be raised whether this provision gives to the Signatory Powers any higher right to demand that the neutrality of Luxemburg should be respected, than the provision under which the High Contracting parties engaged themselves to respect its neutrality.

Considerable light is thrown upon this question by the provisions of the General Act of the West African Conference, which was lately signed at Berlin, namely, on the 26th February, 1885, and under which the Signatory Powers bound themselves in terms to respect the neutrality of the territories in the Conventional basin of the Congo.

Article X. of the General Act provides that "in order to give a new guaranty of security to commerce and industry, and to favour by the maintenance of peace the development of civilisation in the territories comprised in the conventional basin of the Congo, the High Signatory Powers, and those who shall adhere to the Act, engage themselves to respect the neutrality of the territories or portions of territories depending on the said countries, comprising therein the territorial waters, so long as the Powers which exercise or shall exercise the rights of sovereignty or of protectorate over those territories, using their option of proclaiming themselves neutral, shall fulfil the duties which neutrality requires."

It will be seen that the first part of this Article provides that the Powers exercising the rights of sovereignty or of protectorate within the Conventional basin of the Congo, may, by proclaiming themselves neutral, assure to their territories the benefit of neutrality, and no limit of time is set to that neutrality. So far the article is free from all ambiguity, but in order that the sense and scope of the remaining provisions of the Article, with respect to the obligations of the Signatory Powers, might be equally free from doubt, an explanatory report was presented to the Conference before the assent of its members was invited to the Article. This report was drawn up by Baron A. de Courcel, the representative of France, and the President of the Conference, conjointly with Baron Lambertmont, the representative of Belgium, and the reporter of the Conference, both of whom are known to Europe as

competent Jurists and able Diplomats. The substance of their report is as follows :—

“ The article submitted to this Conference provides that the Powers exercising the right of sovereignty or of protectorate within the Conventional basin of the Congo, may, by proclaiming themselves neutral, assure to their possessions the benefit of neutrality. In this case (and this is the essential meaning of the clause) the Signatory Powers engage beforehand to respect this neutrality, under the sole reserve of the correlative observance of the duties that it imposes. This engagement is not only contracted towards the Power which issues the declaration of neutrality, but towards all the other Signatory Powers, who thus acquire the right to demand its being respected (*le droit d'en demander le respect*).

“ No limit is imposed to the declaration of neutrality, which may be temporary or perpetual. It has been explicitly understood that this provision applies especially to the State, which the International Association of the Congo is about to found, and which it appears to have the intention of placing under the system of *perpetual neutrality*. This wish, therefore, obtains beforehand the assent and sanction of the Powers.”

That a conventional engagement in terms to respect the neutrality of a given territory is an adequate security without an express guaranty of its neutrality, which latter provision was in favour at the Congress of Vienna of 1815, which had in view the territorial re-settlement of the map of Europe and a general guaranty of that re-settlement, cannot be open to any doubt, otherwise the conclusion, at which the representatives of fourteen of the leading Powers of the civilised world arrived at Berlin without a dissentient voice, is but “ a Will o' the Wisp ” (*un feu follet*), calculated to lead into a pitfall nations desirous to be neutral and to remain at peace, instead of its making an epoch in International Law,

as the members of the Conference fervently hoped. We had the benefit at the last meeting of the Association for the Reform and Codification of the Law of Nations, which took place in the City of Hamburg, of an able paper on Treaties of Guaranty, by Dr. F. Heinrich Geffcken, formerly Minister Resident and Professor of Law. Dr. Geffcken commenced his paper by observing that Treaties of Guaranty had lately fallen somewhat into disrepute, and he justly remarked that the word "guaranty" has been frequently used of late in treaties in so vague and general a sense that it has imposed no special obligation on the parties to it. For instance, in the seventh Article of the Treaty of Paris of the 30th March, 1856, for the re-establishment of peace, the High Contracting parties guarantee in common the strict observance of the engagement to respect the independence and the territorial integrity of the Ottoman Empire, and in explanation of their guaranty declare that they would consequently consider any attempt to violate the integrity of the Ottoman Empire to be a question of general interest. Other recent Treaties may be cited, in which the word "guaranty" has been used in an equally vague sense. In fact, the language of the General Act of the West African Conference, which has just been cited, is an instance in point, as it commences with declaring that the engagement of the Powers to respect the neutrality of the territories within the Conventional basin of the Congo is made in order to give a new guaranty to commerce and industry, and to favour the maintenance of peace. The word "guaranty," as here used, can hardly be said to give any additional effect to a compact of which the terms are as free from all ambiguity as those of the Berlin General Act.

There has of late been a great gathering of the Princes of Europe in Westminster Abbey; but probably none of them cast a glance towards the tomb of King Edward I.,

who has been styled the English Justinian, and still fewer would have been able to decipher on his tomb the brief and sententious inscription, "*Pactum Serva*," keep your compact. It has been one of the triumphs of modern Diplomacy to place on record a Declaration on the part of the European Powers, who took part in the Congress of Paris of 1856, "that it is an essential principle of the Law of Nations that no Power can release itself from the obligations of a Treaty, or modify its stipulations, except in pursuance of the assent of the contracting parties by means of an amicable understanding." This Declaration is an Annexe to the first Protocol of the Conference of London, which was opened on the 17th January, 1871, and which was signed by the Plenipotentiaries of North Germany, Austria-Hungary, Great Britain, Italy, Russia, and Turkey, to which was afterwards appended the signature of the Plenipotentiary of France, who had not arrived in time to take part in the opening meeting.

There can be no reasonable doubt that the declaratory Article of the West African Conference, whereby the Signatory Powers have engaged themselves to respect the neutrality of the territories comprised within the Conventional basin of the Congo, is within the sense and scope of this Protocol.

By such an engagement the Signatory Powers have acquired the right to demand from one another that the territorial neutrality of the Conventional basin of the Congo be respected by them, and if they have acquired that right, they are entitled to intervene with a view to enforce their demand, but they are not *bound* to intervene, as they would be if they had expressly guaranteed in a formal manner that neutrality. That the High Contracting parties should have been satisfied with a collective engagement on the part of the Signatory Powers to respect the neutrality of the Conventional basin of the Congo is evidence of the

great progress which has been made in the concert of International Law, and of the determination of the Powers to abide by the Protocol above-mentioned of the Conference of London respecting the sanctity of Treaties.

We venture to think that it is not beyond hope that the Powers, whose representatives at Constantinople have regulated in Conference the tolls to be levied on vessels passing through the Suez Canal, may come to an agreement to sign a declaratory Act engaging themselves to respect at all times the neutrality of the waterway through the Isthmus, which his Imperial Majesty, the Padishah of the Ottomans, as Suzerain of the Isthmus and of its waters, has declared to be always open to vessels of commerce as a neutral passage between the two seas.

The territorial Power has thus declared beforehand its willingness that the navigation of the Suez Canal should enjoy a perpetual exemption from the restraints of war. It only remains for the European Powers, which, in the interest of peace, have recognised the perpetual neutrality of so many portions of Europe, and have extended the practical range of the term "neutrality" to the territories and territorial waters of Central Africa, and still further, have admitted the Sultan of Zanzibar to adhere to the General Act of Berlin, and to place his States under the system defined by that Act, to record in a Declaratory Act a common engagement on their part to respect the *perpetual neutrality* of the Suez Canal. There is no necessity for them to guarantee that neutrality by a formal Article. The West African Conference has supplied a precedent, the spirit of which is in accordance with Article V. of the self-denying Protocol (*le Protocole de désintéressement*), signed at St. Petersburg on the 4th April, 1826, after an exchange of views between the Emperor Nicholas of Russia and Arthur, Duke of Wellington, the special Envoy of

Great Britain.\* On this Protocol was built up in 1827 a political concert between France, Russia, and Great Britain, for the pacification of Greece. On this Protocol was based the Egyptian Conference at Constantinople in 1882 on the initiative of Italy, and although that Conference did not lead to an agreement amongst the European Powers as to a common protectorate of the Suez Canal, it led to a manifestation of their general disposition to co-operate in an International Act of a disinterested character. Such an Act might be readily framed after the *formula* approved by the West African Conference, and might embody a solemn engagement on the part of the Signatory Powers to respect at all times the free navigation of the Canal and the connecting lakes as neutral waters, even if the Suzerain Power should be involved in war, for that would be the only case in which the sovereignty of the Padishah would not suffice to protect vessels under the flag of other nations. Such a declaratory Act would be calculated to give practical effect to the pacific assurance of the late Prince Gortschakoff, as expressed in his despatch of the 30th May, 1877,† that “the Imperial Cabinet will neither blockade nor interrupt, nor in any way menace the navigation of the Canal. They consider the Canal as an international work, in which the commerce of the world is interested, and which ought to remain exempt from all attack.”

Great Britain has reciprocated the sentiment of the Russian Cabinet, and has recently endeavoured to consecrate

\* The text of the Protocol deserves to be generally known. It is signed by the Duke of Wellington, Count Nesselrode, and Prince Lieven. Art. V. : “*Que de plus dans ce même arrangement Sa Majesté Britannique et Sa Majesté Impériale ne chercheront ni l’une ni l’autre aucune augmentation de territoire, aucune influence exclusive, aucun avantage de commerce pour leurs sujets, que ceux de toute autre nation ne puissent également obtenir.*”—*British and Foreign State Papers*, vol. 40, p. 1208.

† *Parliamentary Papers, Russia*, No. 2 (1877); *Correspondence respecting the War between Russia and Turkey*.

the principle of the perpetual neutrality of the Suez Canal by a Convention with the Ottoman Porte. According to that Convention, the Powers, parties to the Treaty of Berlin (1878), were to be invited by the Imperial Ottoman Government to approve a Convention, which should provide that they should engage themselves never to impede the free passage of the Canal in time of war, and to respect the property and establishments belonging to the Canal, &c. The Convention with the Porte, however, had in view the settlement of other questions besides the security of the navigation of the Canal, and the Padishah of the Ottomans, on account of those questions, has declined to ratify the Convention. It thus results that the scheme of embodying the accord of the Powers on the subject of the Canal in a Diplomatic Act, which should form a part of the Public Law of Europe, is for the present suspended.

TRAVERS TWISS.

## II.—*VOLENTI NON FIT INJURIA* IN RELATION TO STATUTORY OBLIGATIONS.

IN *Baddeley v. Earl Granville*, reported in the October number of the *Law Reports* (19 Q.B.D. 423), a very important and novel point of departure in the theory of legal reasoning has been taken by a Judicial holding that the application of the principle involved in the maxim, *Volenti non fit injuria*, is excluded in all cases where an obligation is imposed by statute. This decision purports to apply the law as laid down by the majority of the Court in *Thomas v. Quartermaine*, and from that point of view, as well as from the constant recurrence of questions involving similar considerations, is of no small importance.



In *Baddley v. Earl Granville* the plaintiff's husband was killed in coming out of a mine at night by an accident arising through the absence of a banksman, who was required by the provisions of the Coal Mines Regulation Act, 1872, to be constantly present while men were going up or down the shaft. It was the regular practice of the mine, and the plaintiff's husband well knew it, not to have a banksman in attendance during the night. In an action brought under the Employers' Liability Act, 1880, the plaintiff recovered. On appeal to the Queen's Bench Division it was argued on the part of the defendant that as the deceased performed his duties with a full knowledge of the practice of the mine, he voluntarily incurred the risk, and the maxim *volenti non fit injuria* applied, and was an answer to the action. The Court (Wills and Grantham, JJ.) overruled this contention, not on the sufficient, if narrow, ground, that the knowledge necessarily imputed to the plaintiff of the practice of the mine was not sufficient to outweigh the presumption arising from the statutory duty imposed on the defendant, but on the authority of an alleged principle—the extent of which, from its novelty, is at present indeterminate, but in any event must be very extensive—that where an injury arises from a direct breach by a defendant of a statutory duty, the maxim *volenti non fit injuria* is not applicable. The headnote of the decision is as follows:—“*Held* that the defence arising from the maxim *volenti non fit injuria* was not applicable in cases where the injury arose from the breach of a statutory duty on the part of the employer, and that the plaintiff was entitled to recover.”

The purpose of the present Paper is to contend that this holding is not reconcilable with any recognised legal principle ; is contrary to authority ; and is not established by the reasoning.

The natural method of approaching the subject seems to

be first to consider the meaning of the maxim, *volenti non fit injuria*, unembarrassed by any limiting circumstances; then to investigate the import of statutory obligation, in similar conditions; and finally to elicit what, if any, is the relationship established, where the facts of a case seem to involve a collision between the principle involved in the maxim and a duty imposed by statutory obligation.

The maxim, *volenti non fit injuria*, does not express any rigid rule of law that can infallibly be foretold as applying to any case whatsoever. The position of maxims in law is very analogous to that of proverbs in common language. They are the generalisation of experience—often true in their entirety, sometimes but partially true, frequently not true at all; but excluded by the operation of other principles, of which there are many, with which it was never contemplated that they could co-exist. As proverbs are the indices, or rather, the shorthand, of Language, so maxims are the shorthand of Law, of which every department of Law is full. They are compendious expressions that sum up the legal conclusions from those states of facts most frequently found in actual life. They go at a bound from the proof of one crucial fact to a legal conclusion, perhaps several stages remote; and they are the *formulae* of a generalisation which concludes that when the one crucial fact is found to exist, the intermediate stages between that and the conclusion are so very often co-existent, that it is safe in legal processes to presume that the conclusion has followed without a laborious and lengthy method of proof. Thus they come to be adopted as canons of legal reasoning, and to be generally applied at first hand to the elucidating of legal problems; but yet with this tacit assumption that their application may be negatived by the presence of special facts. They are *præsumptiones juris tantum*, and not *præsumptiones juris et de jure*.

A glance at a few well-known legal maxims, drawn haphazard from various departments of Law, will illustrate this. Thus the maxim, *Nullum tempus occurrit Regi*, is an universal presumption; yet, when it is sought to be applied it may be shewn, in certain cases, not to be applicable by virtue of Acts of Parliament,\* in others of stronger considerations; for example, in the case of the lapse of Church preferment to the Crown, and subsequent presentation and Canonical deprivation of the patron's Clerk where the Crown's right of presentation is lost. Or, in the case of a maxim not only of Law but also of Morals, *Audi alteram partem*; yet *Ex parte* Orders are not unknown which not unfrequently enure to the very considerable detriment of the unheard objects of them, and involve the presence of elements excluding the experience of which the maxim is the formula. Or again, *Allegans contraria non est audiendus*;† if, however, he who alleges, alleges one thing as trustee, another in his own person, the maxim is displaced by the presence of a state of facts to which it is not applicable. The presumption is the general rule; the facts, however are special; yet, still, special though the facts may be, it by no means follows that the principle involved in the maxim, which seems at first sight ousted, may not, in the end, be found to be really operative. Or, once more, the very familiar maxim of the law of Contracts, *Ex nudo pacto non oritur actio*, is instantly displaced when it appears that the promise is made under seal, or the equally familiar, *Caveat emptor*, where there is, say, the letting of a ready furnished house, or universally in cases of fraud and misrepresentation. Yet here again the supremacy of the principle of the maxim may crop up and make itself felt in the final adjudication of the case, although the *primâ*

\* E.g., 9 Geo. III., c. 16; 32 Geo. III., c. 58.

† *In re Hammersmith Rent Charge*, 4 Ex. 87.

*facie* presumption is destroyed. To multiply instances, however, seems unnecessary, since slight reflection will shew the same principle running through the whole law; and it holds good with the maxim with which we are now concerned: *Volenti non fit injuria* is not an absolute canon of Law, applicable to all circumstances, but the general presumption of law, dispensing with strict proof of certain facts in certain circumstances; and which circumstances are to be presumed until other circumstances arise which displace them. If this be so—if the maxim be the expression of a general presumption of law—its meaning must be very wide and varied. But confining the consideration of its application for the present to the law of personal injuries, and to its bearing on the relation of master and servant, it sums up the proposition of law that where a man has entered on an employment with a knowledge of the risks involved, in the event of injury befalling him through the dangers of the employment known to him and accepted by him, he cannot recover damages for his injuries. Now, by the Common Law, there is a duty on the master not to subject his servant to unusual or unnecessary risks. But when the servant has the same knowledge, or means of knowledge, as the master when he enters upon the work, and nothing further passes between them than the mere making of their contract, in the event of an accident occurring through the dangerous elements of the employment, the servant could not recover;\* for with those circumstances the presumption embodied in the maxim arises: the servant would be held “*volens*,” and therefore, “*non fit injuria*.” In the event of no such presumption being made, in order to establish the conclusion that the plaintiff undertook the risk, not only would the fact of entrance on a dangerous employment, with means of knowing the danger, have to be shewn; but, further, that

\* *Ogden v Rummens*, 4 F. & F. 756.

the servant dispensed with his right to be safeguarded with a knowledge and appreciation of his right, and knowing the danger.\* Without the principle involved in the maxim, it might be said, Admitted I had knowledge, what then? Your duty to me is absolute. But with the principle of the maxim comes the presumption that having knowledge of the risk there was an undertaking of the risk by the servant. The presumption shortens proof by presuming the most ordinary set of facts arising from an entry on an employment with knowledge of its dangers. The servant may rebut the presumption, but the master is not put to prove its successive stages. The conclusion, then, is that the maxim, *volenti non fit injuria*, is invoked in the general case of personal injury arising out of the relationship of master and servant, where the circumstances of the work point to the conclusion that the master and the servant had equal knowledge of the risk involved in the service: and that thereupon the presumption is made that the servant is disentitled to recover for any injury arising from the risks involved in the service.

But the master may often be bound by statute to adopt certain means of working. The next division of our enquiry is concerned to ascertain the alteration in the position of the master and servant which the neglect of these may bring about. Disregarding, for the moment, the working out of the obvious distinction between statutory requirements imposed for the benefit of the individual, and those prescribed as part of the general policy of the State, and enforced by penalties or even by criminal process, let us consider the proposition in all its breadth, that wherever there is breach of a statutory duty on the part of the employer, the servant injured by such breach is entitled to recover.

\* *Britton v. Great Western Cotton Co.*, 41 L.J.,

It is indisputable this cannot be sustained without eliminating classes of cases not excluded in the statement, and not included amongst those just mentioned where statutory requirements are imposed for the benefit of the individual; for where there is contributory negligence, even in a case of "most culpable negligence on the part of the defendant" in neglecting to observe a statutory rule, the plaintiff is disentitled to recover.\*

But, from this disability of the plaintiff to recover where he has been guilty of contributory negligence, follows inevitably that it is not the defiance (to put the case as strongly as possible) of the statutory obligation that constitutes the defendant's liability to the plaintiff, but some other reason. Now the decision involves this—that though the servant may lose his rights, if he is injured through his own carelessness or heedlessness, yet if he is injured through his own deliberate choice, and through conspiring with his master to dispense with the statutory safeguard, he is entitled to recover. That is, his position is better if he deliberately contrives to evade the statutory obligation and wilfully walks into danger, than it would be if he were merely guilty of recklessness and improvidence.

But it is a general rule of English law that no one can maintain an action for a wrong where he has consented to the act which occasions the injury.† On what ground, then, is the present case an exception to the general principle? The considerations which govern contracts do not apply: for the servant sues for a wrong independent of contract. And if they did, he would be no better off; for, *In pari delicto potior est conditio defendentis*. Should it be said that

\* *Per* Lord Campbell, C.J., *Senior v. Ward*, 1 El. and El. 385; *Britton v. Great Western Cotton Co.*, 41 L.J., Ex. 99; *Thomas v. Quartermaine*, 18 Q.B.D. 685.

† *Per* Tindal, C.J., in *Gould v. Oliver*, 4 B.N.C. 142, cited and approved by Lord Campbell, C.J., 2 Scott N.R. 257.

the servant and the master are not *in pari delicto*, the test, as indicated by the Queen's Bench,\* must be applied, "whether the plaintiff could make out his case otherwise than through the medium and by the aid of the illegal transaction to which he was himself a party;" and it would then appear that he was at the place where the accident occurred, in certain circumstances which would involve the illegal contract. Otherwise, it would be consistent with the facts that the plaintiff was a trespasser, or injured in circumstances where there was no violation of the statutory duty.†

But reasoning of this description is not closely to the point. It is obvious that if a man sues on a contract he must prove his contract. But then, part of it is void. Why? Because the object of the agreement is unlawful? Then the whole is void, and there is no contract to sue on. And if, by any possibility, the agreement is not thus destroyed, it is destroyed by a more circuitous, but as certain, process, since the consideration is not apportioned or able to be apportioned; for who can tell the precise inducement on a man to work? Further, if the plaintiff knew of the violation of the statutory duty and deliberately contracted to make it the basis of his employment, his conduct could not perhaps accurately be called negligent—but would certainly mark a higher degree of default of legal duty. By contributory negligence he would indeed neglect his duty to his employer. By "making an agreement" "that B. shall be at liberty to break the law" ‡ he would act "in violation of public policy and ought not to be listened to:" yet for mere negligence he would be dis-

\* *Taylor v. Chester*, L.R. 4 Q.B. 309.

† See *Coe v. Platt*, 6 Ex. 752, 7 Ex. 460.

‡ Per Wills, J., in *Baddeley v. Earl Granville*, p. 264. *Quære*, would not such an agreement come within the definition of conspiracy given by all the Judges in *O'Connell v. Reg.*, 11 Cl. and F. 1557? And if so, could the plaintiff in any event recover?

entitled to recover, but not for the higher degree of failure in legal duty!

But "if the interest only of the employed would be affected"\* in the circumstances supposed—of a statutory duty unfulfilled by agreement—the employed could not recover. Yet if the statutory duty which is unperformed is imposed for the benefit of the community at large, it is urged that the default in the duty enures to the benefit of the person who has sustained injury through its non-performance. That this is not so as a general legal proposition appears from the case of *Atkinson v. The Newcastle and Gateshead Waterworks Company*, 2 Ex. Div. 441: that it is not so in the case under consideration would further appear from the fact that the plaintiff must make out his claim on its intrinsic merits, and cannot allege the statutory default of the defendant, as, were the law otherwise, the heedless, rash, or negligent workman could recover, which he is now precluded from doing.†

As regards a defendant on whom a statutory duty sanctioned by a penalty—for that is the only case we are now concerned about—is imposed, obedience to the law is absolutely required, and a contract to dispense with it is void as against the policy of the law. But the law can take care of itself. If the offence is criminal there is punishment by which it is enforced; if less than criminal there are penalties. There does not, however, appear any principle on which a plaintiff who has implicated himself in the breach of a statutory duty can dissociate himself sufficiently from his illegal complicity, when injured by reason of it, to sustain a right of action against the other party. Public policy is the concern of the State, and not primarily of individuals. Actions by informers of course exist. Public policy would perhaps require that they should

\* *Griffiths v. Earl of Dudley*, 9 Q.B.D. 357.

† *Thomas v. Quartermaine*, 18 Q.B.D. 685, *Per Bowen*, L.J., at p. 694.



not be multiplied. But a statutory obligation has never yet been decided necessarily to involve a benefit to an informer. Two persons agree simultaneously to shoot one another: they grievously wound each other, but fail to kill; their agreement is void as utterly repugnant to the very existence of the State. But could either bring an action against the other for personal injury? Yet the State has means to vindicate its own authority, and a right of action in such a case would, to some people, seem more detrimental to public policy even than the impunity of the original outrage against the State.

How, then, is the principle involved in the maxim, *volenti non fit injuria*, affected by an unperformed statutory duty? In the ordinary case of a servant working on machinery with a knowledge of the risks, and receiving injury whilst so engaged, the presumption, as we have seen, is that he undertook the risks, and has precluded himself from recovery for resulting injuries.

But in the special case of a servant working on machinery with a knowledge of the risks, and receiving injury whilst so engaged, from some portion which there was a statutory duty to fence, the presumption would be that he was entitled to recover; since the defendant would not have conformed to his statutory duty. The special circumstance of a statutory duty would have displaced the presumption that would otherwise have been made. The defendant would be in default; and, in such circumstances, it is more reasonable to attribute the injury to the defendant's manifest breach of duty than to assume that because the servant continued at work he was consenting to the neglect of the statutory duty. But that would, of course, be subject to its not being absolutely shewn that he had acted so as to destroy the right that the law had so far assisted. Now, he would disentitle himself to recover for personal injury on its being shewn that he had been

guilty of contributory negligence; for he would not prove the essential condition of his case, that the injury was caused by the defendant's negligence. Assuming, however, there was no actual negligence, except the fact of the non-performance of the statutory duty, then, according to the analogy of those cases where the plaintiff has consented to an illegal act, the defendant, by shewing that not only had the plaintiff a knowledge of the risk but also a knowledge of the duty towards him, and that, with this knowledge of duty and risk, he dispensed with the performance—by strictly proving what, with other circumstances, would have been presumed, would seem to oust the plaintiff's right of action.

Thus three propositions emerge, it is submitted.

I. In the case of an ordinary Common Law liability, when a servant is shewn to have equal knowledge or means of knowledge of the risks of an employment as his master, the maxim, *volenti non fit injuria*, becomes applicable, and marks a series of presumptions of law that must be excluded (if at all) by evidence.

II. In the face of the non-performance of a statutory duty, the liability of the master for personal injury to his servant arising out of the same is to be presumed, and this presumption is not displaced by proof that the servant had equal knowledge or means of knowledge of the risks of the employment as the master.

III. When there has been breach of a statutory duty by a master, and injury to the servant has followed thereon, the master may displace the presumption of his liability for the same by proving those facts which, in the case of an ordinary Common Law liability, are connoted by the maxim, *volenti non fit injuria*, i.e., knowledge of the duty and of the danger, with acceptance of the danger and a dispensation to the master from its consequences.

So much then, on the principle involved. The next thing is to consider the authorities. The first of these is *Caswell v. Worth* (5 E. & B. 849). This was an action for not sufficiently fencing machinery under a statutory obligation. The plea admitted the breach of statutory duty, but alleged that the plaintiff wilfully set the machinery in motion, and was injured. This was held a good plea; and no indication was given of the point now mooted ever having occurred either to the eminent counsel or to the very learned Judges who were engaged in the case. Lord Campbell said, "The Statute was clearly not intended to protect persons employed in factories from the consequences of their own misconduct;" and Coleridge, J., "The Statute makes the omission of a certain act illegal, and subjects the parties omitting it to penalties. But there can be no doubt that a party receiving bodily injury through such omission has the right of suing at Common Law. *The action, however, must be subject to the rules of Common Law, and one of these is that a want of ordinary care or wilful misconduct on the part of the plaintiff is an answer to the action.*" The judgment of Wightman, J., is in the following terms: "The plaintiff says that the defendant omitted a duty, viz., to fence machinery, *whereby* the plaintiff was injured. The plea alleges that the plaintiff was not injured thereby, but by the plaintiff's own wilful act in setting the machinery in motion. It is clear, both upon principle and authority, that this is a good defence." *Holmes v. Clarke*\* is the best known case. There, Pollock, C.B., in the Exchequer, most carefully limited his judgment in the following proposition, and exactly fitted to the actual facts of the case he was deciding:—"Where machinery is required by Act of Parliament to be protected, so as to guard against danger to persons working it, if a servant enters the employment

\* 6 H. & N. 349, 7 H. & N. 937.

when the machinery is in a state of safety, and continues in the service after it becomes dangerous in consequence of the protection being decayed or withdrawn, but complains of the want of protection, and the master promises to restore it, but fails to do so, we think he is guilty of negligence; and that if any accident occurs to the servant he is responsible."

It is very apparent, on considering this carefully-guarded proposition, that no such simple and sweeping proposition occurred to the Court of Exchequer as that where injury arises, from the breach of a statutory duty on the part of the employer, the defence arising from the maxim, *volenti non fit injuria*, is not applicable, and the plaintiff is entitled to recover. Had it so occurred, the most careful limitation of the proposition laid down would have been wholly unnecessary. In the Exchequer Chamber, again, the point was not raised. All that was said in the judgments as to statutory obligation was the remark of Wightman, J., concurred in by Willes, J.:\*—"I attribute more importance to the statutory obligation than has been put upon it by my Lord."

The point, however, is touched on in *Britton v. Great Western Cotton Co.*,† by Bramwell, B., in the following words:—"Here the plaintiff is not placed in the dilemma which arises when the action is for the breach of a duty at Common Law. That dilemma is this—either the danger was obvious, or it was not. If obvious, the servant must have known it as well as the employer; if it was not obvious, there was no negligence in the employer. That dilemma is not in the plaintiff's way here, for the duty is a Statutory one. *If the deceased dispensed with the performance of it, knowing the duty and knowing the danger, I think he would be 'volens,' but not otherwise.*" To this the rest of the

\* 31 L.J. Ex., at p. 359.

† 41 L.J. Ex. 99, at p. 101.

Court agreed. And from this it is, at any rate, manifest that neither to the mind of Bramwell, B., nor to the mind of the rest of the Court, was there present the consciousness of any such principle as that laid down in *Baddeley v. Earl Granville*. The judgment proceeds on a contradictory assumption, namely, that, as far as the injured person was concerned, there might be circumstances under which he dispensed with the statutory obligation. The view Bramwell, B., seems to take of a statutory obligation is that it displaces "the dilemma which arises when the action is for a breach of duty at Common Law," and the dilemma so displaced is "either the danger was obvious, or it was not; if obvious, the servant must have known it as well as the employer," *i.e.*, the plaintiff was "*volens*"—had his eyes open; and the presumption involved then arose that he knew the duty and knew the danger, and by working accepted them, and therefore could not recover. "If it was not obvious, there was no negligence in the employer." The subject has also been touched on in *Thomas v. Quartermaine*. Bowen, L.J., in his valuable judgment, says—"It is plain that knowledge may not be a conclusive defence. There may be a perception of the existence of the danger without comprehension of the risk, as where the workman is of imperfect intelligence, or though he knows the danger remains imperfectly informed as to its nature and extent. There may, again, be concurrent facts which justify the enquiry whether the risk, though known, was really encountered voluntarily. The injured person may have had a statutory right to protection, as where an Act of Parliament requires machinery to be fenced. The case of *Clarke v. Holmes* is a case of that sort, and has been so explained subsequently by Judges of authority. . . . The defendant in such circumstances does not discharge his legal obligation by merely affecting the plaintiff with knowledge of a danger which, but for a breach of duty on

his own part, would not exist at all." And Fry, L.J., on the same point, said: " Knowledge is not of itself conclusive of the voluntary character of the plaintiff's actions; there are cases in which the duty of the master exists independently of the servant's knowledge, as where there is a statutory obligation to fence machinery." It would have antecedently appeared more than probable that the meaning of these passages was reasonably clear. Cases involving the state of facts implied by the maxim, *volenti non fit injuria*, are divided into two classes. In the one, the knowledge on the part of the injured person is in circumstances that lead necessarily to the conclusion that the whole risk was voluntarily incurred. In these cases knowledge as thus defined involves the application of the maxim. But there is another case, where knowledge as previously understood is not sufficient, but there must be concurrent facts to prove what was assumed in the former class of cases—that is, an actual voluntary encountering of the risk. And in this class of cases is included the case of a statutory right to protection where an Act of Parliament requires machinery to be fenced. But Bowen, L.J., goes the length of removing possibility of doubt by saying that *Clarke v. Holmes* is a case of that sort. Now, in *Clarke v. Holmes* the neglect to fence was clearly admitted: if the statutory duty was established, and the existence of the statutory duty was strenuously argued, the proposition laid down in *Baddley v. Earl Granville* would have conclusively settled the case; but not only is no such proposition hinted in any of the judgments, but it is not even glanced at throughout the report of the long argument extending over six pages in 7 Hurlstone & Norman. The proposition has not, then, authority in its favour. It remains to consider the reasoning in the judgment.

The basis of the whole is the assertion " that in *Thomas v. Quartermaine* both the Lords Justices thought that the

maxim would not apply at all where the injury arose from a direct breach of a statutory obligation." The reported judgments in that case were written judgments. The passages relating to this point, and already quoted in this Paper, it is submitted, can bear no such meaning as that alleged: and, further, if the meaning alleged is the law, they are phrases absolutely incoherent in the midst of luminous and closely-reasoned judgments.\* But if the Lords Justices decided this point, "*cadit quæstio*," as far as *Baddeley v. Earl Granville* is concerned. Still, the learned Judge who gave the leading judgment there does not leave the alleged principle to rest on the mere question of fact, whether *Thomas v. Quartermaine* had or had not decided "that the maxim would not apply at all where the injury arose from a direct breach by the defendant of a statutory obligation." He supports it by independent reasoning, thus: "An obligation imposed by Statute ought to be capable of enforcement with respect to all future dealings between parties affected by it. As to the result of past breaches of the obligation, people may come to what agreement they like: but as to future breaches of it there ought to be no encouragement† given to the making an agreement between A. and B. that B. shall be at liberty to break the law which has been passed for the protection of A." But

\* The learned Judge who gave the leading opinion in *Baddeley v. Earl Granville* appears either to have misconceived what was said in *Thomas v. Quartermaine*, or to have reasoned *à dicto secundum quid ad dictum simpliciter*.

† The learned Judge's view of the law would seem to be the best encouragement to A., at least, for the making of such agreements. He might say, "I am very willing to work without the protection. If all goes right, then I work for advanced wages. If an accident happens, then I can repudiate my bargain. In either event it is the best thing for me that the statutory obligation should go unperformed," and if the statutory obligation were very onerous, it might be best for the master also.—Cf. 9 Q.B.D. 357.

"I should say that workmen, as a rule, are perfectly competent to make reasonable bargains for themselves."—*Per* Field, J., *u.s.*, at p. 303.

if the law has been passed for the protection of A., then *Griffiths v. Earl of Dudley* is plain, that such a contract is not against public policy. However, substitute the more plausible proposition, A. and B. shall not be at liberty to agree to break the law which has been passed for the benefit of the State and the interest of the public at large, and is, moreover, enforceable by penalty or even by criminal process. The proposition is probably indubitably true, but surely most indubitably irrelevant. The point to be established is that A. may sue B. for injuries which he has sustained by his own consent. The proof is that A. and B. may not consent. True; but having consented, does it follow that A. may allege his wrong-doing against B.? If it does not, for what purpose is the proposition advanced?

Again, we have already seen from the judgment of Lord Cairns, in *Atkinson v. Gateshead and Newcastle Waterworks*, that a statutory obligation does not, *proprio vigore*, import a right of action by the person suffering injury against the person in default with regard to the statutory obligation. Apart from the statute, the master and his servant may make an agreement that the servant is to take the risks. If the statute does not give the right of action—and if there were no statute there could be no right of action, for the parties, perfectly and lawfully, had agreed there should not be, and the law enabled them—in what way can we arrive at a right of action at all? The point seems yet more insoluble, and yet more demanding solution, how to frame an action “without a right of action.” The learned Judge continues: “It seems to me that if the supposed agreement between the deceased and the defendant, in consequence of which the principle of *volenti non fit injuria* is sought to be applied, comes to this that the master employs the servant on the terms that the latter shall waive the breach by the master of an obligation imposed on him by



statute, and shall connive at his disregard of the statutory obligation imposed on him for the benefit of others as well as himself, such an agreement would be in violation of public policy and ought not to be listened to."

Now, if the obligation was a general obligation, or enforced by a penalty, let it be conceded at once that an agreement to evade it is against public policy.

The general proposition that seems implied, that agreements to evade the obligations of a statute are necessarily against public policy, need not be analysed here, though not admitted by the present writer.

But again, it must be pointed out that it does not follow that because an agreement entered into between two persons is against public policy, when one is injured through the carrying out of the void agreement he could recover from the other, because the injury was received in carrying out the void agreement. Yet this is the only relevant proposition, and this there is no attempt to sustain even by a dogmatic statement of the fact, much less by authority or argument. It follows, then, that the reasoning does not sustain the proposition for which it was vouched. The decision of *Baddeley v. Earl Granville* can undoubtedly be supported on other and less ambitious grounds than those vouched. That such is the case is mainly the justification for calling attention to the decision in this Paper. For that reason there is no probability of the defendant carrying the case to appeal, to settle doctrines of abstract Law from which he could derive no advantage, while in the very few weeks of active legal business since the decision has been pronounced, there is already a reported case of its doctrine being adopted and followed in its entirety.

The conclusion, then, that is submitted from the doctrines and principles investigated is, that the effect of an undischarged statutory obligation is to raise a strong presumption of negligence against the person in default. Yet that such

presumption is not conclusive of his liability in the case of injury arising therefrom to his servant; but on its being shewn that the servant so injured through default in observing the statutory duty, not only knew the perils to which the employment exposed him, but the duty of the defendant towards him, and, notwithstanding, accepted the risk, and dispensed with the duty: the strong presumption raised by the neglect of the statutory duty is done away with; and, despite the existence of such unperformed statutory duty, the servant is not allowed to recover.

THOMAS BEVEN.

### III.—OUTLINES OF JURISPRUDENCE OR THE PHILOSOPHY OF LAW.\*

**I** PROPOSE here to sketch the manner in which the study of Jurisprudence or the Philosophy of Law has been hitherto cultivated.

I shall first define Jurisprudence or the Philosophy of Law, as understood in our day. Secondly, I shall consider the circumstances which have impeded its practical study. Thirdly, I shall shew the light which the researches of modern archæologists and philologists, and of the Historical and Analytical School of Jurists have thrown on the Philosophy of Law, and indicate the slow formation of the new science of Jurisprudence. Fourthly, I shall give the history of the expressions “philosophy of law” and

\* [We have desired to print this interesting contribution to Western Juridical Literature from an Oriental pen within the Jubilee Year, which has lately been observed throughout the Indian Empire and in Ceylon. The substance of the present article was delivered as a Lecture to a class of Native Students of Law in Ceylon, by Hon. P. Rámanáthan, M.L.C., as Professor of Jurisprudence.—Ed.]

“jurisprudence.” Fifthly, I shall distinguish between the primary and secondary meanings of the term Jurisprudence, and dwell upon the use and scope of such expressions as General or Particular Jurisprudence, Equity Jurisprudence, Comparative Jurisprudence, and Jurisprudence as understood in France. Sixthly, I shall state the bearing which Jurisprudence has on other social sciences, and point out that Jurisprudence, though cultivated by itself, is really a branch of theoretical Politics. And lastly, I shall refer to the practical importance of the study of Jurisprudence.

Jurisprudence or the Philosophy of Law consists of a knowledge of those legal ideas and relations which are found common to the laws of civilised nations. The laws current among them either enjoin or prohibit a course of conduct. Jurisprudence, as understood at the present day, does not concern itself with the infinite varieties of conduct which those laws prescribe,—does not, in other words, deal with the *matter* of those laws, but rather with their abstract *form* and *structure*,—with those essential and necessary features without which laws, as such, cannot exist.\* It is the province of this science to investigate the primary grounds, and determine the fundamental ideas, on which legal systems (properly so called) are based.

The ancient Romans were the earliest nation we know of who devoted attention to the study of not only their own laws, but the laws of foreign nations, with the view of eliminating what was arbitrary or peculiar to themselves, and thus making their administration of justice as little repugnant as possible to the aliens who flocked to their cities. But though they succeeded in giving to the world a body of legal maxims of conduct recognised more or less

\* See Archbp. Thomson's *Laws of Thought*. After defining Pure Logic as “the science of the form or the formal laws of thinking,” he gives a full explanation of the terms *form* and *matter* “in their philosophic use.” Sections 11—15. See also Dr. Holland's *Elements of Jurisprudence*, p. 5.

absolutely among all civilised nations, yet their explanation of what Chancellor D'Aguesseau\* has called the "metaphysics" of law was unsatisfactory to a degree. Indeed, they cannot be said to have a definite conception of the form of Law as apart from its substance.

From the time of the Romans till within recent years—for a period of about twenty centuries—the true nature of the essential elements which pervade legal systems—such as Law, Justice, Right, Duty, Contract, Obligation, Injury, Crime, and other cognate ideas and relations,—and the proper method of treating them, had eluded the grasp of Jurists, owing to a number of causes which are traceable more or less to the Deductive method of investigation under which the study was cultivated. The bold assumptions of this process, resting barely on actual observation of facts, and the ingenious adaptation of facts to theories already in existence, afforded little security against error, especially in a science of so involved a character as Law. There was also another groove of thought but for which, perhaps, the evils of this speculative spirit might have been less intensified. I refer to the belief that Law was a special entity, hedged in by barriers and fenced off from all other studies, and

\* "You perhaps thought," says the Chancellor to his son, "that when you finished the study of philosophy you had taken leave of metaphysical investigations. But you will return to them when you examine the origin of natural law and its consequences, and all those matters which may be called the metaphysics of jurisprudence. I should not, however, advise you to devote your time to this subject, if its study were calculated more to adorn the mind than to form it. But you will find that almost all the principles of the most venerable laws—that is to say, those which are universal and immutable—depend thereon, as so many natural consequences derived from that original Justice of which God is the source, and the first notions of which He has engraven in our very existence. You must therefore make the *metaphysics of law* a study preliminary to every other study of Jurisprudence. And I advise you for that purpose to read the first book of *Cicero de Legibus*, where he examines the first principles of all laws."—D'Aguesseau, *Œuvres*, tom. I., pp. 270—271, Prel. Instruct.

itself cut into parts or periods unconnected with each other. Such notions are now happily of the past. Deduction has given place to Induction.\* Law, historically considered, is no longer assumed to have a growth and existence uninfluenced by other fields of thought : on the contrary, it is acknowledged that the true development, tendency and purpose of its principles are best understood, not by reading it by itself, but with the current of general Civilisation. For Law, Government, Morals, Religion, Literature and Science register the mental condition of an age in its various phases. They exert a mutual influence on each other, and Civilisation depends for its excellence and durability upon the harmony with which they work. The over-activity of any one of them affects the rest and leaves its mark behind in some break or irregularity of the strata. India and other Oriental countries, for instance, are under a Civilisation the peculiarity of which is the absorbing influence of Religion. No act of life in the social or political, moral or philosophical world is seen there except through the light

\* Buckle distinguishes between the two methods with his usual perspicuity:—

“ [The reader] must remember that induction proceeds from the smaller to the greater ; deduction from the greater to the smaller. Induction is from particulars to generals, and from the senses to the ideas ; deduction is from generals to particulars and from the ideas to the senses. By induction, we rise from the concrete to the abstract ; by deduction, we descend from the abstract to the concrete. Accompanying this distinction, there are certain qualities of the mind, which, with extremely few exceptions, characterize the age, nation, or individual, in which one of these methods is predominant. The inductive philosopher is naturally cautious, patient, and somewhat creeping ; while the deductive philosopher is more remarkable for boldness, dexterity, and often rashness. The deductive thinker invariably assumes certain premisses, which are quite different from the hypotheses essential to the best induction. These premisses are sometimes borrowed from antiquity ; sometimes they are taken from the notions which happen to prevail in the surrounding society ; sometimes they are the result of a man's own peculiar organization ; and sometimes, as we shall presently see, they are deliberately invented, with the object of arriving, not at truth, but at an approximation to truth.”—*History of Civilization in England*, Vol. II., pp. 419—20 (2nd Ed.)

of Religion. The Hindu law as promulgated by Manu, the Mussulman law as contained in the Koran and the judgments of the prophets and the twelve Imáms, the Chinese law as prescribed in the *Le Ke* or Book of Rites,\* and the Jewish law, jumble together, each in its own way views of cosmogony and politics, rules relating to dress, mode of eating, fasting, pilgrimages and other religious duties, with an exposition of civil rights and wrongs. National life in those countries has in a manner been petrified and made stationary by the dominant authority of Religion. While conceptions so different may be twisted out of their own strata and turned into other channels, a still more effectual and sweeping displacement of ideas may occur when one nation conquers and politically invades another. The elements of Civilisation at such a crisis become disjointed and are often mixed up in confusion with a new world of ideas, thus rendering it difficult to believe in the continuity or connection of things. Most nations have experienced these changes, and their institutions have been proportionately modified. In the absence of all the information which we possess now, who could refrain from viewing such institutions except in the light of boulders thrown adrift?—they dropped from the sky, they had no connection with each other, each was an entity, a cosmos, in itself. Amidst such beliefs, it was plainly impossible to arrive at a complete and correct theory of the origin and progress of legal conceptions. If,

\* Professor Douglas says: "This work is said to have been compiled by the duke of Chow in the 12th century before Christ, since which time it has ever been the guide and rule by which Chinamen have regulated all the actions and relations of their lives. No every-day ceremony is too insignificant to escape notice, and no social and domestic duty is considered to be beyond its scope. . . . Its rules are minutely observed at the present day, and one of the six governing boards at Peking—the Board of Rites—is entirely concerned with seeing that its precepts are carried out throughout the empire."—*Encyclopædia Britannica* (9th Ed.), Art. "China."

therefore, we would realise the nature of Law in its fulness, clothed with its highest interest and highest profit, we must sweep away the barriers hitherto in existence and view it not by itself, nor as made up of isolated fragments, nor as compassed within distinct periods, but as one of kindred subjects, mutually acting and re-acting on each other, in the great stream of general Civilisation.\*

The accessions which recently have been made to the various departments of knowledge, more especially to the department of Historical Jurisprudence, have given the death-blow to those speculations which, under the influence of an excessive love of simplicity, attempted to deduce from an abstract principle, or even a mere fiction, the details of a systematic theory. Montesquieu † in France, and Hugo in Germany, were among the first Jurists to deviate from this conceit as fruitless, and to draw their principles “not from prejudice, but from the nature of things” ‡ — not from “pure reason,” but from a

\* Of the *connective tissue* of Civilisation, Mr. Bagehot remarks: “We have here the continuous force which binds age to age, which enables each to begin with some improvement on the last, if the last did itself improve; which makes each civilisation not a set of detached dots, but a line of colour, surely enhancing shade by shade. There is, by this doctrine, a physical cause of improvement from generation to generation: and no imagination which has apprehended it can forget it; but unless you appreciate that cause in its subtle materialism, unless you see it, as it were, playing upon the nerves of men, and, age after age, making nicer music from finer chords, you cannot comprehend the principle of inheritance either in its mystery or its power.”—*Physics and Politics*, pp. 8—9 (*International Scient. Series*. 1885.)

With this may be read what Mr. Herbert Spencer has written on social causation, and Mr. Freeman’s Lecture on *The Unity of History*; also two able articles in the *Westminster Review* for April, 1861, and July, 1864.

† Montesquieu flourished 1689—1755. He says he was engaged twenty years on his work called *The Spirit of Laws* (*L’Esprit des Lois*). It has been translated into English by Nugent [1793].

Hugo’s chief works are *The History of the Roman Law*, and *The Law of Nature as a Philosophy of Positive Law*, published about the year 1785.

‡ Montesquieu’s Preface to *The Spirit of Laws*.

patient and careful observation of the existing laws of different countries under different conditions of existence. Montesquieu and Hugo may be said to be the founders of Historical Jurisprudence, but their power of generalising was much too limited by the meagre materials then before them to yield satisfactory results. "During the present century, however, a vast store of information, bearing directly or indirectly on the subject, has been accumulating from different quarters, especially since Von Savigny\* dispelled the wide belief that the Roman Law perished with the Western Empire and revived by accident after six hundred years of neglect. His work on *The History of the Roman Law During the Middle Ages* has fully established the fact of the preservation of the Roman Law from Justinian to the time of the Glossators, who propagated its study in the countries of Europe, and it constitutes a new departure of Thought in social science. We have now all the important systems of law treated historically: the Roman, the German, the French and the English, as well as Feudal and International Law. We have also the primitive social organisms of different countries in Europe and Asia carefully examined by archæologists: *c.g.*, those of Russia, Servia and Austrian Slavonia; those of Germany, Scandinavia and England; with those of France, Iceland and the Highlands of Scotland; and others still—and these by far the most

\* Von Savigny was the pupil and friend of Professor Hugo and has contributed powerfully to the development of the general doctrines of the Historical School of Law. He is also an Analytical Jurist. The first of the six volumes of his *History of the Roman Law during the Middle Ages*, shewing the influence of Roman Jurisprudence on the laws of the nations of Western Europe generally, during the six centuries before Irnerius (A.D. 1100—1118), has been translated into English by Cathcart.

Irnerius was the first of the Glossators, and the founder of the famous school of Bologna, the principal seat of the revival of the Roman Law.

The Glossators were the Jurists who wrote short notes, or *glosses*, commenting upon the *Corpus Juris Civilis*, from the time of Irnerius until that of Accursius, the last Glossator of importance, who died about 1260.



important, because they are actually to be seen at the present day—in India, Ceylon\* and the Alpine Valleys of Switzerland. We have also collateral information from the Greek, the Roman, and the Sanskrit literature, and more particularly from Comparative Philology.† In the

\* It is not generally known what an abundance of Archaic Law exists in Ceylon. The *Thesa-valamei* (literally country-usages) of the Tamils of the Northern Province, the Customs of the *Mukkuvar* of the districts of Kalpitiya, Jaffna and Batticaloa, and of the Kandyan Sinhalese in the Central Province, do not appear to have attracted the attention of any but local practising lawyers and judges.

I may also refer to the Archaic institutions known as Village Communities, of which the Government Agent for the newly created North Central Province of Ceylon thus speaks :—

“If these districts have been neglected and the villages have been left buried in their virgin forests, and so have failed to share in the general progress which has been going forward around them they have at least this compensation, that they have retained, almost in its pristine purity, the ancient village system of the Aryan races. The discovery of this political state of the new province at once suggested the necessity for the greatest care in avoiding any measures which would suddenly break up this system; to this end, and to utilise the existing system, it was decided to introduce throughout the province the Village-Communities’ Ordinance, No. 26, of 1871. . . . In the other provinces, if anything has to be done, down comes the tax-gatherer, everything has to be paid for. Here the people give their labour gratuitously for common objects and escape all taxation. In the other provinces, police are required and paid for by a special tax. Here there are no police. . . . Here the irrigation works, except so far as Government assists, are restored by the united unpaid labour of the landowners. In the other provinces, except in a few cases, all improvements in irrigation have to be paid for by money contributions from the landowners, recovered with great difficulty and often opposition. In the other provinces, tolls are imposed even on the minor roads. Here the people make their own roads with their unpaid labour, and remain free from tolls, &c.”  
—*Ceylon Administration Reports*, 1878, p. 108.

† The dawn of this science has given the utmost prominence to the Comparative method of study under which it was among the first to be cultivated. The establishment of this method, says Mr. Freeman, “has been the greatest intellectual achievement of our time. It has carried light and order into whole branches of human knowledge, which before were shrouded in darkness and confusion. It has brought a line of argument which reaches moral certainty into a region which before was given to random guess-work. Into matters

facts brought to light by these researches, we see plainly the movement of those fundamental ideas, the reason and knowledge of which constitute the Philosophy of Law.

The formation of this Philosophy is due no less to the enquiries of the Historical School of Jurists than of what is known as the Analytical School, represented chiefly by Jeremy Bentham, Frederick Von Savigny and John Austin. The close analysis which Bentham initiated\* in his examination of some of the cardinal terms of Jurisprudence which were the subject of the introductory chapters to Sir William Blackstone's *Commentaries*, opened up to the world a line of investigation which has since been eminently successful (to use his own words) "in exposing the universal inaccuracy and confusion" which pervaded the realm of Law.†

The procedure involved in this method is purely inductive and resembles that followed in Natural Science. The general truths of Mechanics, for instance, require a certain effort of the mind for their due apprehension: they do not tally with all the facts of our experience, and have therefore to be conceived with a limitation and yet with an extension. Thus the first law of motion, we learn, consists in all motion being in itself uniform in velocity and rectilinear in direction. But this abstract idea of motion no man has ever seen, or can ever see, exemplified, because in reality a moving body on the earth or in the heavens is subject to so many extraneous forces that it can never release itself from their influence, but must be regulated in its motion by the adjustment of forces which prevails in nature. Much after the same fashion Analytical Jurists, in the observation of

which are for the most part incapable of strictly external proof, it has brought a form of strictly internal proof which is more convincing, more unerring."

—*Comparative Politics*, Lect. I., *ad init.*

\* In his essay, *A Fragment on Government, or a Comment on the Commentaries*.

† *Ibid.* Preface, p. vii.

legal phenomena, seized upon the relations that were uniform out of the relations that were various, in order to evolve in that manner definitions, without which no department of knowledge could claim a scientific basis. It is no doubt true\* that the abstract types and relations do not in every instance correspond with the actual conditions of society in all their different stages of progress or in all their minuteness, but this is a necessary defect attending more or less all science. It is the natural opposition between Fact and Idea. Moreover it is of great practical value to know that the *tendency* of legal phenomena is to point in a particular direction. As remarked by John Stuart Mill,† “it is a scientific proposition that cowardice tends to make men cruel,—not that it always makes them so; that an interest on one side of a question tends to bias the judgment,—not that it invariably does so; that experience tends to give wisdom,—not that such is always its effect. These propositions, being assertive only of tendencies, are not the less universally true, because the tendencies may be counteracted.”

It will thus be seen that the two schools of Jurists have thrown on the Philosophy of Law a light which it never before possessed. By means of that light we have at length attained to what may indeed be called a scientific view of the lines on which legal systems stand. What was once a chaos of *disjecta membra*, vague, conjectural, imaginative, assumes now the form of a rational system in which each fact will be found to have not merely a

\* As pointed out by Sir Henry Maine in his *Early History of Institutions*, Lect. XII.

† *System of Logic, Ratiocinative and Inductive*, Vol. II., Bk. VI., Ch. 5, pp. 529—530 (Edition of 1846.)

See also Sir G. C. Lewis's very instructive remarks on Prediction in Politics, Ch. 24, Vol. II., of his treatise on the *Methods of Observation and Reasoning in Politics*.

precise relation to every other fact, but a precise and intelligible meaning,—all contributing to an emancipation of legal knowledge from obscure modes of thought and expression.

We are now in a position to apprehend clearly the full meaning of the term, Philosophy of Law. The word Philosophy, you are aware, is often used synonymously with the looser applications of the word Science.\* It is also used to denote the whole range of Physical Science. A third use of the word is where it is applied to any particular department of knowledge, so as to embrace a collection of general principles referring to that subject, as *Mental* Philosophy, *Moral* Philosophy, &c. Yet another use of the word is where it means the hypothesis on which phenomena are explained. And Dr. Morell† points out that in the proper and absolute sense of term, philosophy is the “science of first principles—that namely which investigates the primary grounds and determines the fundamental certainty of human knowledge generally.” We may now readily frame for ourselves a definition of the *Philosophy of Law*. It is truly the science of the first

\* Mr. George H. Lewes justifies the recognition of *Metaphysics* as a science and says,—

“What constitutes a science? The co-ordination of facts.

“By what characters may it be recognised? A science exists, 1stly, when it has a clearly defined object; 2ndly, when it has a clearly defined place in the region of research, a place not occupied by any other; and 3rdly, when it has a clearly defined method of applying the results of experience to the extension of experience.”—*Problems of Life and Mind*, i. p. 80.

According to Professor Bain, the peculiarities of science are these: 1. It employs special means and appliances to render knowledge *true*; 2. Knowledge in the form of science is made as *general* as possible; 3. A science embraces a *distinct department* of the world, or groups together facts and generalities that are of a kindred sort; 4. A science has a certain *order* or arrangement of topics, suitable to its ends in gathering, in verifying, and in communicating knowledge.—*Logic*, Pt. I., *Deduction*, p. 23.

† *The Philosophical Tendencies of the Age*. Lect. I., “Positivism,” p. 13.

principles of Law, the science which investigates the primary grounds and determines the fundamental ideas on which legal systems are based. That expression, or one nearly like it, has come to us from Germany, where it was rendered familiar by Professor Hugo about the year 1785, by means of his Treatise, entitled: *The Law of Nature, as a Philosophy of Positive Law*. By that work he intended to refute the belief then prevalent in the Germanic School of Jurists that a Code of eternal, immutable and universal Law was deducible from the dictates of what I have already referred to as "pure reason." He insisted upon a study of actual and existing (or positive) systems of Law as an essential mode of Juridical investigation, and thus the expression Philosophy of Positive Law came to denote the study of Law on the inductive method, as opposed to the *à priori* searching for a *jus naturæ*. John Austin borrowed the phrase from Hugo and designated his world-renowned lectures as "Lectures on Jurisprudence or the Philosophy of Positive Law," and the disciples of Austin have freely used the expression Philosophy of Law in the sense I have indicated.

The term Jurisprudence has also a history which may be briefly noticed. The early Romans who used the word meant by it, simply a practical knowledge of the law, *juris* or *legum prudentia*, and though in the days of Cicero the duty of a *jure peritus*, known also as *juris consultus*, was admitted to be the study of the law and usages observed among citizens, and the giving of opinions, bringing of actions and taking of security,\* yet a confusion of the boundary lines of Law, Morality and Deontology (or Morality as it ought to be) had already begun, as might be seen from those well-known passages of his which treat of *lex naturæ*. *Lex*, said he, *est ratio summa insita in natura*,

\* Cicero *de Orat.*, i., 48.

*quæ jubet ea quæ facienda sunt prohibetque contraria. Eadem ratio, cum est in hominis mente confirmata et confecta, lex est.\** This definition was the outcome of Roman lawyers saturating themselves with the Greek philosophy which flowed into Rome soon after her conquest of Greece. The Stoics of Greece maintained that the material universe was pervaded by a force† or *ratio*, a regulating power, and that as man was endowed with reason, and reason could not be one thing in the physical world and another in the moral world, the *ratio* of the universe was identical with the *ratio* of man, and that therefore the *lex naturæ* included not only the laws directing the universe, but the law which directs the thoughts and actions of men. *To live according to nature* was the guiding maxim and the *summum bonum* of life. The Roman Jurists therefore abandoned themselves to the belief that what *ought to be* law was law *in fact*. Ulpian accordingly said *jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia,‡* a definition couched in almost the very words employed to define the Stoic idea of “wisdom,” but with this limitation that the wisdom in question related to the world of right and wrong. I think I have now said enough to indicate how gradually Jurisprudence released itself from the trammels of this and other doctrines, and how it has come

\* Cicero *de Legib.*, i., 6.

† Carlyle says: “This universe—this infinite variety of sights, sounds, shapes and motions—ah me! what could the wild man know of it; what can *we* yet know? That it is a Force, and thousand-fold complexity of Forces. . . . Force, Force, everywhere Force. . . . There is not a leaf rotting on the highway but has Force in it; how else could it rot?”—*Lectures on Heroes*, Lect. I.

‡ The Duke of Argyll believes “that the nearest conception we can ever have of Force is derived from our own consciousness of vital power.”—*The Reign of Law*, p. 296 (4th Ed.).

§ *Dig.* i. i. 10. 2. Ulpian died in the year of Christ 228. The Digest is full of extracts from his works. He was Prætorian Prefect at the time of his death

to mean at the present day, not the study of any one system of Law, not the search *à priori* for a *lex naturæ*, but the science which treats of the essential elements and relations common to legal systems in actual existence.

I do not mean to say that the word Jurisprudence has lost all trace of its primary meaning. On the contrary, we still hear of Roman Law, English Law, and other systems of Law spoken of as the Jurisprudence of Rome, England, or of any particular country. It is for this reason that eminent Jurists, including the fastidious John Austin, have felt bound to distinguish between *Particular Jurisprudence* and *General or Universal Jurisprudence*, meaning by the former a body of coercive laws current in a particular community, and by the latter the formal or necessary features which characterise the laws of all communities. From the same original sense arises the expression *Equity Jurisprudence*, so familiar to English lawyers. Ever since the imperfections of the Common Law of England forced King Edward III. to refer matters of Grace to the cognisance of his Chancellor, the jurisdiction so created has professed to apply Equity to the Jurisprudence of the country, and in process of time Equity Jurisprudence came to mean that branch of the Law of England, which was administered exclusively by Courts of Equity. •

From the same original sense, too, comes the expression *Comparative Jurisprudence*, which has for its function the practical improvement of Law and Legislation by means of a Comparative study of the Laws of different countries upon any given subject. Sir Henry Maine observes\*—“In some systems of Law, the preliminary assumptions made are much fewer and simpler than in others; the general propositions which include subsidiary rules are much more concise and at the same time more compre-

\* *Village Communities in the East and West*, Lect. I., p. 5.

hensive, and the courses of legal reasoning are shorter and more direct. Hence by the examination and comparison of laws the most valuable materials are obtained for legal improvement. There is no branch of Juridical enquiry more important than this, and none from which I expect that the laws of our country will ultimately derive more advantage, when it has thoroughly engrafted itself upon our legal education. Without any disparagement of the many unquestionable excellences of the English Law—the eminent good sense frequently exhibited in the results which it finally evolves, and the force and even the beauty of the judicial reasoning by which in many cases they are reached—it assuredly travels to its conclusions by a path more tortuous and more interrupted by fictions and unnecessary distractions than any system of Jurisprudence in the world. . . . I think [the study of Comparative Jurisprudence] is best taken up at that stage of legal education at which the learner has just mastered a very difficult and complex body of positive law, like that of our own country. The student who has completed his professional studies is not unnaturally apt to believe in the necessity, and even in the sacredness, of all the technical rules which he has enabled himself to command; and just then, regard being had to the influence which every lawyer has over the development of law, it is useful to show him what shorter routes to his conclusions have been followed elsewhere as a matter of fact, and how much labour he might consequently have been spared.”

There is one other use of the word Jurisprudence which deserves mention. I refer to its use in France to denote the discretion of judges,—not the discretion which Lord Camden in the case of *Doe v. Kersey* described as the law of tyrants, always unknown, different in different men, casual and depending on constitution, temper and passion; in the best, oftentimes caprice; in the worst, every vice,



folly and passion to which human nature is liable\* ;—but the discretion which acts in conformity with a logical method and instinct, born and bred of the constant study and practice of the law,—the discretion called appropriately “interpretative logic.” The use of the term in this sense rests upon the analogy of expressions like *media jurisprudentia*† in the later Roman Law, which meant extended interpretation of the Law.

It remains to be mentioned that Jurisprudence and its sister sciences of Law, International Law, Ethics and Political Economy, though cultivated apart from each other, are really fragments of the Science of Politics. They all treat of the conduct of human beings in society, but differ from each other only because each views such conduct from its own standpoint. Sir George Lewis says—“Politics relate to human action so far as it concerns the public interests of a community, and is not merely private or ethical. Human action thus defined consists of 1. the acts and relations of a sovereign government both with respect to its own subjects and other sovereign governments, 2. the acts and relations of members of the political community so far as they concern the government, or the community at large, or a considerable portion of it. It seems to be agreed that politics include everything which relates to the constitution of a sovereign government and its immediate acts, legislative, executive or otherwise. Hence, Jurisprudence is admitted to be a part of Politics.” ‡ As Politics has its theoretical and practical branches, the one dealing with the structure and organisation of Society, the other with maxims of political practice aiming at general welfare, it is useful to bear in mind that leaves

\* Lord Camden's argument in the case cited, Easter Term, 5 Geo. III. *Fearne's Execut. Devises*, 429 (3rd Ed.).

† Justinian's *Institutes*, iii., 23.

‡ *Methods of Observation and Reasoning in Politics*, Vol. I., p. 44.

taken from the book of Jurisprudence may well form the basis of a chapter or two in theoretical Politics.

I can only now allude for a moment to the practical value of the study of Jurisprudence or the Philosophy of Law. It has already been stated that an examination of the Laws of civilised nations has brought to the forefront certain general facts, ideas and principles, which the Philosophy of Law appropriates as its subject matter. The student who informs himself of these truths and then approaches the study of a particular system of Law will master it with ease, and the more general study will lend to the special one a charm and interest which most students untutored by such skill cannot experience. In the practice of the Law, too, the mind that has been fortified by the liberal and far-reaching truths of the Philosophy of Law is seldom liable to be warped by narrowness of spirit; while the mental habits engendered by a study of those principles will aid the professional lawyer considerably in the exercise of his duties.

P. RÁMANÁTHAN.

#### IV.—FOREIGN MARITIME LAWS: II. ITALY.

##### MERCANTILE MARINE CODE.

##### PART I.

##### *Administrative Provisions.*

##### TITLE I.

##### *Mercantile Marine Administration.*

##### CHAPTER I.

##### *The Administrative Jurisdiction of the Mercantile Marine.*

ART. 1. The administration of the Mercantile Marine is attached to the Ministry of Marine, and includes everything attributed to it by this Code, or which is or may hereafter be assigned to it by law.

2. The Coast of the Kingdom is divided into Maritime Departments, and these are subdivided into Districts [*circondari*]. The numbers of the Departments and Districts, and the limits and Capitals of the same, are determined by the Table annexed to the Code.

3. The administrative and technical service of the Mercantile Marine is performed by a branch of the Civil Service, called the Captaincy of Ports, and is composed of—

The Captains of the Ports ;

The Port Officers :

Those who seek to become such.

One quarter of the berths of the Port Officers are reserved for Officers of the Royal Navy.

The number, promotion, and pay of the aforesaid persons is settled by law.

4. A Captain of the Port will reside in every Capital of a Department.

A Port Officer will reside in every Capital of a District, except where it is also the Capital of a Department.

In all other places of any considerable Maritime importance, a Port Officer, subordinate to the one at the Capital of the District, shall reside.

5. In places which are not the seat of any Maritime Authority the service of the Mercantile Marine will be entrusted to some Government official performing similar duties, or to a private individual, with the title of Port Delegate, and the annual pay established by order.

6. The employés in the service of the Captain of the Port above the grade of applicant are appointed by the King, on the nomination of Minister of Marine.

7. The Mercantile Marine Offices, which are called Offices of the Port, are provided with servants, water police, and seamen, in accordance with the Regulations.

8. Water Police and seamen of the port are appointed

in the manner and on the conditions laid down by the Regulations.

9. The Mercantile Marine Service in foreign countries is entrusted to the Consuls and Consular agents of the Kingdom.

## CHAPTER II.

### *Of the Persons Employed in the Captain of the Port's Office:*

10. The Captains of the Ports are entrusted with the executive duties of the administration of the Mercantile Marine, and of the ports, landing places, roadsteads, shores, wharves, moles, and hards, which are situated in their respective Departments, as well as the cuts and canals which belong thereto. The Port Officers exercise in their respective Districts such administrative functions as are not reserved by law to the Captains of the Ports.

11. Captains of Ports exercise the functions of Public Officials in respect of the business entrusted to them by this Code. Their acts are deemed to be Public acts as regards Civil and Criminal proceedings.

These provisions apply to the acts of Port Officers who preside over a District and perform the functions of Captains of the Ports.

12. Port Delegates perform the duties to which they are appointed by order within their Districts.

13. The Captains and Officers of the Port perform the Judicial police functions entrusted to them by this Code, and in exercising such functions may themselves demand the assistance of the ordinary police.

14. Port Captains of a District where the Capital of the Department is situated, and Port Officers in their respective Districts, decide disputes not exceeding the value of 400 *lire* (or £16) in the following cases :—

(a.) Damages sustained by collision between vessels in anchoring or moving, or in the execution of any

other manœuvre, within the harbours, basins, and cuts of the District.

(b.) Compensation, pay, and reward due for salvage to a ship in peril or wrecked.

(c.) Wages and dues payable for local pilots, tugs, watermen, and ballasting, as also for the hire or rent of careening hulks, caulking stages, hanging stages, and generally of requisites for heaving down, coating, repairing, masting, and unmasting ships.

(d.) Wages, provisions, and generally the fulfilment of shipping articles between captains, officers, and crews.

15. Captains and Officers of a Port in the above disputes proceed without Judicial formalities, on hearing the parties, or even in the absence of those who do not appear when they have been duly summoned.

In every case they must make out a report, in accordance with which will be drawn up the proper Decree which has effect as a Judgment.

Against the Decree no defence can be raised or appeal allowed.

16. In questions where the amount exceeds 400 *lire* the Captain and Port Officers should act as arbitrators to bring the parties to an amicable settlement, and, when they do not succeed, draw up a report, which, with their evidence as experts as to facts, and their opinion of the case, they forward to the competent Judicial Authority.

## TITLE II.

### *Of the Sea Service.*

#### CHAPTER I.

#### *Of Seamen.*

17. The class denominated "seamen" [*gente di mare*] includes all persons who, from the nature of the sea service, are subject to the disciplinary regulations laid down in this Code.

18. "Seamen" are divided into two categories, those who are actually sea-going persons and those who practice maritime arts and industries.

The first category includes :—

- (a.) Captains and skippers [*padroni*];
- (b.) Sailors and ship's boys.
- (c.) Engineers, firemen, and other persons employed under any name in the working of steam engines, on board sea-going vessels.
- (d.) Fishermen employed in sea-fishing, or in foreign fisheries.

The second category includes :—

- (a.) Shipwrights.
- (b.) Master carpenters and caulkers.
- (c.) Local pilots.
- (d.) Watermen, coast fishermen, and supernumeraries in sea-going and foreign fishing vessels.

19. Seamen of the first category are registered in proper lists.

Every person so registered is furnished with a certificate on which the registration is noted.

20. The following conditions are required for a person to be registered on the list of seamen of the first category :—

- (a.) That he is a citizen of the State.
- (b.) That he is at least 10 years old.
- (c.) That he has been vaccinated or had small-pox.
- (d.) That if less than 18 years old he has the consent of the persons who have parental authority or guardianship over him.
- (e.) That he is domiciled in some Commune of the Realm.
- (f.) That he shews that immediately after registration he will be shipped on board a national vessel.

\* See note to Art. 58, *post*.

21. A person who is registered will, after having completed 24 months actually at sea, being 18 years of age, be passed into the class of sailors (*i.e.*, A.B.'s).\*

Seamen of the second category will be registered in separate lists in manner to be determined by regulations.

22. Persons who, on account of age, are not allowed by the law for recruiting the army to leave the country, except on certain special conditions, cannot be registered unless they prove that they have complied with those conditions.

24. Persons of the seaman class who wish to change the domicile under which they are registered, must make a declaration at the office of the Captain of the Port at which they are registered, or at one of the dependent offices. A change of domicile does not necessitate the transfer of the registration to the list of another Department unless the person who is registered requires it.

## CHAPTER II.

### *Of Shipbuilders, and Merchant Shipbuilding Yards.*

25. No one can build vessels of more than 50 tons unless provided with a license which qualifies him as a naval engineer or shipbuilder.

26. Naval engineers may build vessels of any burthen, and they alone are allowed to build iron vessels.

27. Shipbuilders are of two classes :—

Shipbuilders of the 1st class may build vessels of any burthen.

Shipbuilders of the 2nd class may not build vessels of more than 300 tons.\*

28. The following conditions are needed to obtain licenses as engineers and shipbuilders :—

(a.) To be of full age.

\* In England, four years' service at sea is required for the rating of A.B. (43 & 44 Vict., c. 16, § 7).

- (b.) To have never been condemned to a criminal punishment for any offence, nor to a correctional punishment for theft, cheating, embezzlement, or fraud, receiving stolen goods, or assisting in their sale, or for offences against public morals, unless subsequently reinstated.
- (c.) To have passed a technical examination in accordance with the programme laid down for each grade or class.

29. Licenses as naval engineer or shipbuilder are granted in the name of the King by the Minister of Marine.

30. Foreign shipbuilders, when provided with licenses from their own Government, may be authorised by the Minister of Marine to carry on the works within the Kingdom.

31. Shipbuilders, before beginning to build a ship, must make a declaration at the District Port Office, stating whether it is to be built on their own account or on that of another person. In the latter case, they must produce the contract relating to it, whether arising out of public deeds or private agreements, authenticated by a notary or judicially; otherwise the ship will be deemed to be built on the builder's own account. If the owner or ship's husband supplies the materials, and the shipbuilder is limited to the hiring of his own labour, without any special agreement in writing, the declaration will be made by owner or ship's husband in the presence of the builder.

This provision is important, as, if the vessel is built for another person, the builder has a privileged claim on the ship itself for the purchase-money. (See *Code of Commerce, Italy*, Bk. II., Tit. IX., c. iv., Art. 675 (12).)

32. The shipbuilder cannot make an alteration in the ship without the consent of the owner.

Before carrying out any alteration, notice must be given at the Port Office, and the conditions of Art. 43 be complied with.

33. A person who, after having given an order for a ship to be built, intends to take another person into co-owner-



ship, must make a declaration at the Port Office of the new partner, by public deed or document, authenticated by a notary or judicially, before demanding the ship's register. Similarly, a person who has undertaken to build a ship on his own account, and who proposes to take some one else into partnership in the ownership of the vessel which is being built, must make a declaration at the time and in the manner above stated. Failing the above declarations, the vessel will remain the property of the person ordering it or building it respectively.

34. Master carpenters may build vessels of less than 50 tons burthen, and must conform to the regulations of Arts. 31, 32, and 33.

35. Concessions of portions of the shore for use as shipbuilding yards may be granted to shipbuilders and naval engineering companies, for a period not exceeding 15 years, in the manner and form which is laid down in the regulations.

For the purposes of this article master shipwrights are included in the term shipbuilders.

### CHAPTER III.

#### *Of the Ship's Papers which Avail to Prove Her Nationality.*

36. The ship's papers with which national (*i.e.*, Italian) ships must be provided, are :—

The register [*atto di nazionalità*], and the shipping articles [*ruolo di equipaggio*].

37. The register states the name of the ship, its description, its burthen, and its owners or part-owners with the share in which each of them is interested. On the same document is entered the license which allows the vessel to be sailed.

38. The registers are issued by the Minister of Marine in the name of the King, according to the prescribed form.

39. No vessel is deemed to be national [Italian], nor entitled to fly the national flag, unless furnished with a register. Boats and small craft used in the Coast fisheries of the Realm, or intended for harbour and shore work, are exempted from the obligation of having a register.

Moreover, boats fitted out to be always used in Coast fisheries abroad within certain specified limits,\* may be exempted by order of the Minister of Marine.

Every vessel which is furnished with a register must have her name and the maritime department to which she belongs painted on her stern.

40. To obtain a register, a ship must belong to citizens of the State or to foreigners who have become domiciled or resident five years at least.

Nevertheless, foreigners, not domiciled nor resident in the State, may have shares in the ownership of a national vessel up to one-third part.

For the purposes of the present Article, a Company, whether under the name of a firm [*in nome collettivo*], or with limited liability [*in accomandita*], even when its offices are situated abroad, is considered as national if any one of the partners who is liable for the whole [*socio solidale*] who gives it its name is a citizen of the State.

A Company of such a nature, which is composed of foreigners, but is established or has its principal officer within the Realm, is treated as a foreigner domiciled in the Realm. A Joint Stock Company [*società anonima*] is considered to be national if its principal office is within the kingdom, and its general meetings are held there.

The agencies of foreign companies which are authorised by the Government to carry on business within the Realm, are treated as foreigners domiciled or resident in the Realm,

\* This is no doubt intended to cover the coral fishing boats on the Coast of Africa opposite Italy. The fisheries on the Banks of Newfoundland are hardly Coast fisheries.

provided always that they have an agent furnished with full powers [*mandato generale*] to bind the Company.

Cf. Mer. Ship. Act, 1854, § 18.

41. Foreigners who are neither domiciled nor have been resident for five years in the State, and who by any means acquire the ownership of more than one-third in an Italian ship, must within one year transfer the excess to some person who is qualified by the Code.

Whensoever, in consequence of a change of nationality or any other reason, a part-owner of a vessel loses his Italian citizenship, he must make a declaration at the Port Captain's Office, and if he is not within the provisions of the first part of the preceding Article 40, he must within a year make over to an Italian the excess over the  $\frac{1}{3}$  part which a foreigner is permitted to hold.

The said duty is imposed in all cases on a native woman who marries a foreigner and abandons the State.

After the lapse of a year, if the foreigner, or a woman who has married a foreigner, in the case above-mentioned, has not effected the transfer of that portion of the vessel which such persons are not allowed to hold, the Captain of the Port of the Department in which the ship is registered proceeds to sell judicially the above-mentioned portion.

He deducts the expenses of the sale from the price, and pays the balance into Court for the account of whom it may concern.

Cf. Mer. Ship. Act, 1854, § 62.

42. No ship which is sold by the subject of a State at war with a State which is at peace with the King's Government can obtain Italian nationality (in the ordinary way).

But the Minister of Marine, if satisfied of the *bona fides* of the sale, may grant such nationalisation.

43. To obtain a register, the ship must be measured in the manner and form laid down by regulations.

44. The statement of part-ownership in a vessel must be made by shares ( $\frac{1}{32}$ )\* or fractions of shares.

In England the division is into  $\frac{1}{8}$  shares (Mer. Ship. Act, 1854, § 37, Mer. Ship. Arm. Act, 1880, § 2).

Italy has adopted the measurement used in England under the Mer. Ship. Act, 1854, §§ 20-24, since 1st July, 1873. See Order in Council, 30th September, 1873.

45. All national ships must be entered in the proper registers.

46. The ship will be entered on the register of the Maritime Department where the owner is domiciled. Where there are several owners, the registration will be in the Department in which those who have the greatest interest in the ship, or the ship's husband or manager, mentioned in Art. 53, are domiciled.

This Article is held to make a vessel so far a part of the territory of the Department in which she is inscribed that her crew are amenable to the Criminal Jurisdiction of that Department, and not to that of their personal domicile (*Simili*, Court of Cassation, Turin, 14 Ap. 1870. *J.D.I.P.* 1879, p. 551).

47. The ship's register is valid as long as the ship exists, unless there is an alteration in her description (rig) or construction.

48. Transfers of the property in a ship must be announced to the Port Officers in the manner and time laid down in the Regulations:—

- (1.) When a Port Officer is aware that in consequence of a death, marriage, change of nationality of the owner, judicial proceedings, or legal abandonment, a ship has passed entirely into the possession of a foreigner who is not entitled to be the owner of an Italian vessel, or a person who, having once possessed the necessary qualifications, has lost them, he publishes, in the newspaper which contains judicial announcements, an advertisement giving notice to

\* *Carato* = "A term used in the Mediterranean to express the  $\frac{1}{32}$ th part of a vessel."—Laugierri's *Nautical Dict.* (It.-Eng.)

all creditors who are interested in the ship, that, after the lapse of three months, if there be no opposition, he will issue a certificate that the vessel ceases to be entitled to carry the national flag, and will cancel the ship's registration.

If there be any opposition, or if mortgages, or if bottomry loans, not payable on the ship's arrival, are found to be registered upon the ship, the Port official will refuse this certificate, and, after the lapse of a year from the day on which the transfer of ownership or the change of the owner's nationality occurred, will proceed officially to sell the vessel in conformity with Art. 41.

- (2.) Except in the case where the sale is Judicial, no Italian ship can be sold to a foreigner who does not possess the qualifications for being owner of an Italian ship, unless permission for the ship to cease to fly the Italian flag has been obtained from the Maritime authority, if within the Realm, and from the Consular authority, if abroad, and after the return and withdrawal of the ship's papers and log-books.

If contracts of mortgage or bottomry are found to be registered on the ship's register, or if opposition is raised to the sale on the part of privileged creditors, the Maritime or Consular authority will refuse leave to cease to sail under the Italian flag, and the sale, however made, if made without such leave, will be null and void.

Previously to giving leave to cease to sail under the Italian flag, the Maritime or Consular authority must require deposit of a sum sufficient to meet the wages of the crew, their maintenance, and the expenses of sending them home.

49. The owner or ship's husband cannot, except in the case provided for in Art. 175, proceed to break up a ship

without making a declaration to the Maritime authority if the vessel is within the Realm, and to the Consular authority if she is abroad. In either case, the person making the declaration must deliver to the authority mentioned the log books and ship's papers.

If there are debts registered against the ship, or claims of privileged creditors, the Maritime or Consular authority will prevent the breaking up (of the ship), and appoint a watchman for the ship from the office, so as to provide that at the instance of the more diligent party justice may be done by the Judicial authority.

50. A ship which has not been heard of for two years shall be cancelled out of the register.

51. The Muster rolls with which every ship must be provided are made out by the Captains and Officers of the Ports in the form laid down in the regulations.

#### CHAPTER IV.

##### *Of Shipowners and Ship's Husbands (armatori).\**

52. A ship's husband who undertakes the management of a ship for one or more voyages or expeditions, must supply her with such things as are necessary, and entrust her to the command of a captain or skipper, whether he is himself the owner of the vessel or not.

53. Before a ship is fitted out, the owners must make a declaration as to who is the ship's husband before the Captain or Officer of the Port if within the Realm, or before the Consular Officer if abroad, or they must produce a

\* This word, which appears in slightly altered forms in most of the modern maritime languages, cannot well be translated by one English word. It means those persons, be they owners, part-owners, or hirers of ships, or those employed by them, who have the general management of ships, and the old English maritime word ship's husband seems that which is most nearly equivalent. Where, however, the context has required the use of the word Charterer, it has been used.

document to prove his appointment by the persons whom he represents.

Failing such declaration and proof, the owner who has more than half of the interest in the ship will be deemed to be the ship's husband, or if no person owns more than one half of the ship, all the co-owners are deemed to be ship's husbands.

When persons are declared to be ship's husbands for one expedition or voyage, they are deemed to be so in succeeding expeditions unless a declaration is made to the contrary.

54. When neither the owner nor the ship's husband is domiciled in the Department in which the vessel is or should be registered, or when there are several co-owners of the same ship, or several ship's husbands, or when the ship's husband is the Captain himself. The owners or ship's husbands may appoint one person who is domiciled in the Department in which the vessel is registered, for the purpose of representing them before the Maritime authority. Owners and ship's husbands may also be represented for all legal purposes in the Chancery (Registry) of the Royal Consuls abroad in the case provided for by Arts. 61 and the clauses of Art. 102.

55. Owners and ship's husbands are answerable to the State for fines incurred by the Captain or Master in the exercise of his office.

*Cf. Code of Commerce, Italy, Bk. II., Tit. I., Arts. 491, 496, ante.*

56. Owners and ship's husbands are also severally liable for the payment of taxes and other maritime dues, for the repayment and payment, and for the retention of the pay due to the Mercantile Marine Sick Fund, for the expenses of maintaining and sending home persons belonging to the ship's company, and for all disbursements made for these purposes by the agents of the Government where such expenses are chargeable to the ship.

The liability to repay expenses of maintenance, and of sending home members of the ship's company, ceases in

the case of shipwreck and abandonment of the ship, but such repayment is a charge on articles salvaged, and on their proceeds, with priority in the terms of Art. 133.

Captains of Ports may issue injunctions for the repayment of the expenses mentioned in this Article, which will be made executory by the Civil Tribunal, saving an appeal to the said Tribunal within 12 days, and after payment of the sum, which the appellant proves by attaching the receipt to the appeal, without which the appeal will not be allowed.

See *Code of Commerce, Italy*, Arts. 534—542, *ante*.

## CHAPTER V.

### *Of Captains and Masters.*

57. No one can command a merchant ship under the national flag unless he is a certificated captain or skipper, or otherwise authorised in the terms of this Code.

58. Captains are divided into two classes, that is captain for ocean (long) voyages, and captain for coasting voyages. There is only one class of skippers.

To assimilate as far as possible these several grades to their English equivalents, *Capitani di lungo corso* is hereafter translated as captain or commander, the usual title of courtesy to the person in command of our large ocean-going vessels; *Capitani di gran cabotaggio*, a grade (see next Article) equivalent to our person in command of coasting or home-trade vessels as master; and *padroni*, a grade nearly equivalent to our fishing-boat masters, by the word which is now good Parliamentary English (see 46 & 47 Vict., c. 41), *i.e.*, skipper.

59. Captains for ocean voyages (Commanders\*) may command vessels for any destination: Captains for coasting voyages (Masters\*) may command vessels in the Mediterranean, Black Sea, Sea of Azoff, and outside the Straits of Gibraltar, on the Ocean Coasts of Spain, Portugal, France, and the British Isles; in the North Sea, in the Baltic, and on the West Coast of Africa, as far as Senegal, including the islands which are not more than 300 miles from the

\* See Note to Art. 58, *ante*.



whole of the said coasts ; outside the Suez Canal they may navigate, and the Red Sea, the Persian Gulf, and the Indian Coast as far as Bombay and the adjacent Islands.

Skipper (*padroni*\*) may command vessels in the whole of the Mediterranean.

60. Native seamen, who are 21 years of age and have been 4 years at sea, who can read and write, and who know the compass, and have not been sentenced to a Criminal punishment for any offence, nor to a Correctional punishment for theft, cheating, embezzlement, or fraud, receiving stolen goods, or assisting in their sale, or for offences against Public morals, or who have obtained pardon, may be authorised, in the form and within the limits laid down in the regulations, to command craft not exceeding 50 tons burthen, for short coasting voyages.

61. Masters\* and skippers\* when they are in places beyond the limits within which they are permitted to navigate, may be authorised by the Royal Consul to command ships under the national flag for trade in the channels and over the whole extent of the rivers, and along the sea coast within a radius of 300 sea miles from the port in which they are fitted out.

62. The following conditions must be complied with to obtain a certificate as Captain or Skipper :—

(a.) To be a citizen of the State.

(b.) Not to have been condemned to a Criminal punishment for any offence, nor to a Correctional punishment for theft, cheating, embezzlement, or fraud, receiving stolen goods, or assisting in their sale, or for offences against public morality, or to have obtained a pardon.

(c.) To have passed a technical examination according to the established programme. Furthermore, it is necessary for a skipper\* to have completed his

\* See Note to Art. 58, *ante*.

22nd year, and to have been 3 years actually at sea, of which one year at least must have been in voyages of the class in which the applicant seeks to command.

For Masters,\* 22 years of age, and 4 years at sea, of which at least half must have been in national (Italian) ship, and one whole year as Mate or Second Mate.

For Captains,\* 24 years of age and 4 years at sea, of which at least half must have been a national (Italian) ship, and one whole year in voyages outside the Mediterranean, and an equal time as Mate or Master of a Coaster.

The examination, on passing which certificates for the several steps are confirmed, cannot be attempted before the candidate has completed the age and sea service that are required for the rank which he desires to obtain.

In England a Master must be 21 years old, and have served 1 year as Mate.

63. Captains and Skippers who have been naturalised cannot exchange their certificates (*i.e.*, those of other states), unless they comply with the conditions prescribed for the rank which they desire to obtain. Nevertheless, the Minister of Marine may, under certain circumstances, dispense with the examination, when the consent of the Admiralty Council has been previously obtained.

64. Naval officers, naval artificers, and naval engineers and assistant engineers, and chief and assistant quartermasters, who have completed their service in the Royal Navy, may obtain certificates of the following ranks in the Mercantile Marine:—Naval officers, that of Captain for ocean voyages (with the denomination of Extra Captain, as laid down in the next article):—Officers of the technical

\* See note to Art. 58, *ante*.

branches of the Navy, that of naval artificers,—engineer officers, or chief engineers, that of first class engineers,—second or assistant engineers that of second class engineers,—chief quartermaster that of Master,\* and assistant quartermaster that of skipper.\* Such licenses will be conferred on compliance with the conditions established by Articles 28, 62, and 69 respectively, with the exception of that of examination.

In England, Commissioned officers of the Executive branch are entitled to certificates of *service*, entitling them to command Merchant Vessels (Mer. Ship. Act, 1854, § 135 (1) ).

Captain's\* certificates are granted in the name of the King by the Minister of Marine, and those of Skipper\* by the Captain of the Port of the Department to which the candidate belongs.

Captains for Ocean voyage† who wish to prove the completeness of their studies and the greater knowledge they have acquired, will be admitted to a voluntary examination, in conformity with a programme specially arranged. If they pass it, they will obtain from the Minister of Marine a special license under the denomination of Extra Captain for ocean voyages.

F. W. RAIKES.

\* See note to Art. 58, *ante*.

† In England there is a voluntary examination for the certificate of "extra Master."

• V.—THE WALCHEREN EXPEDITION AND THE  
• PUBLIC LAW OF EUROPE.\*

THE month of July, 1809, saw a large and imposing force of the two services assembled at Dover and Deal, in view of the Expedition to Walcheren under Lord Chatham. The Expedition is one seldom thought of by the present generation, save as one of Great Britain's failures. A failure it was, and a very slight perusal of the interesting journal to which we shall refer our readers for fuller details would suffice to convince anyone that the seeds of its failure were within its own ranks, as the late Mr. Irving clearly shews.

But the Walcheren Expedition has another aspect, less frequently remembered. It is connected by its avowed object with what has since become a part of the Public Law of Europe, viz., the solely commercial character of the Port of Antwerp, secured by Art. XV. of the Treaty of Paris, 1814—a point of capital importance, brought out, in a different connection, by Sir Travers Twiss, in his Paper on the Neutralisation of Territory in the present number of this *Review*. •

The high strategic value of the Port of Antwerp, as a safe starting-point for expeditions against the British coast, or against British commerce in the Channel and North Sea, had naturally not escaped the eye of Napoleon. We thought to forestal him and frustrate any such employment of the Port of Antwerp by ourselves seizing Walcheren, and then carrying Antwerp by a rapid *coup de main* from the vantage ground of Flushing. This idea was the keynote of the Walcheren Expedition. It might perhaps have

\* *Narrative of the Expedition to Walcheren, under the Command of Lord Chatham.* By the late John Irving, M.P. Hatchards. 1887.

been carried out, if our commanders had realised the advantages which sometimes hang trembling on the balance awaiting the man of daring. Had our commanders landed in sufficient force, and pushed on at once, Flushing, Bergen op Zoom, and Antwerp itself might have fallen into our hands. Such is the opinion of competent eye-witnesses of the Walcheren Expedition, Foreign as well as British, as recorded by Mr. Irving. It was also, on the whole, his own opinion, and high military authority was on the same side. We lost our chance, as we have lost it on other occasions, notably, perhaps, in the Crimea. We gave the enemy time to fortify and to strengthen garrisons, and although we took Flushing, we had to wait till the conclusion of the Peninsular War, and gain victories at a loss of life which, we cannot wonder, seemed to Mr. Irving to threaten the very existence of our army in Spain, before the Treaty of Paris, 1814, assured us the object of the Walcheren Expedition by enacting that the Port of Antwerp should be solely a Port of Commerce.

We sent forth to the fertile, but ague-stricken *Verdronken Land* that lies between East and West Scheldt, a more imposing force of ships of war and troops than has often left our coasts for anything short of a great European War. We covered the Downs with a forest of masts; our enemy proved to be in the main a "ragged regiment," the odds and ends, so to speak, of Napoleon's armies. The inhabitants of the country on which we landed were glad to see us deliver them from French rule. They were civil, "at first from fear," but at the touch of our gold and silver they became anxious to bring out of their best, and though "sallow and unhealthy," from the nature of their surroundings, they were well-housed and well-clothed, substantial yeomen, in the main.

We made a considerable display of our military and naval force; we proved that our ships could pass batteries,

and so put our Admiral in heart at passing them practically scatheless that Sir Richard Strachan seemed to think nothing of ships passing batteries, though Mr. Irving shrewdly suspected that, before the experiment, he did not quite like the attempt. We set the town of Flushing in a blaze. Congreve's rockets went hurtling through the air "like fiery meteors," says Mr. Irving, "and exploding with a horrid sound." The sight was grand and terrible. Nothing could exceed the accumulated force of the attack of the line-of-battle ships, gunboats, and bomb-vessels upon devoted Flushing, and the final impression, as our eye-witness writes, "was a train of reflection not very favourable to the humanity of war." And from the very first it was doubtful to an impartial onlooker such as Mr. Irving whether we could hope for success in the Expedition, and if we obtained it, whether the price paid would not be too high. That, in fact, is the cloud of condemnation which hung over the Expedition from the first. It might have been a success, from the military point of view, but the success was almost certain to be purchased at too high a price. The object of the Expedition was, indeed, ultimately attained, as we have stated, by the Treaty of Paris, 1814. But that object would certainly have been quite as much within our grasp without the sad expenditure of life occasioned by the Walcheren Expedition, as the meed of our general success in combating and overthrowing Napoleon. Therefore we cannot say much for the practical character of the genius which devised it, nor can we say that the relations of the two services with each other, and of the services with the Ministry of the day, argued well for the working of the machinery of the Body Politic. Where jealousies were so rife, success was hardly to be hoped for.

Lord Chatham, though "affable" both to his department and to strangers, was, from the first to the last that we see

of him in Mr. Irving's narrative, behind time. He delayed at Dover, until the good people of Deal grew angry and impatient at his tarrying, which they attributed to a "love of ease and inactivity,"—scarcely the fitting qualities for the command of such an Expedition as was then setting forth from our shores.

Yet again, when such success as was to crown the Expedition had crowned it, and the Garrison of Flushing was to march out and surrender to the British Commander, we read of Lord Chatham as being "one hour after his time,"—which might have seemed designed as an insult to the conquered enemy, though no doubt nothing was further from Lord Chatham's desires.

The Naval part of the Expedition enjoyed the advantage of the services of Sir Richard Strachan, of whom Mr. Irving writes that "he had the reputation of being one of the most practical seamen in the Navy, very able in the management of a ship, and the manœuvring of a fleet." These high qualities were no doubt exercised to advantage both in the disembarkation of the troops, which was most successful, and in the passing of the Flushing batteries. Sir Richard was also spoken of as "hasty, but good-tempered in the main,"—characteristics which also found their vent before his career was run.

Yet the condition of things in the Scheldt Islands was distinctly favourable to our forces as invaders, for the people were glad to be delivered from the rule of the Foreigner, and were greatly exasperated at the resistance offered, while his own troops went so far as to threaten the life of one of the French commanders who resisted for a while. These facts are incidentally related by Mr. Irving in connection with the surrender of Campben in Walcheren, and they are of considerable importance in their bearing on our estimate of the reception which our Government may have had intimation that we should

meet with from the population, and the slight probability of serious resistance by the French troops, with the facilities thence arising for the maintenance of our position when once our forces were landed. . The markets, in fact, were readily supplied, and prices do not seem to have ruled at all high, considering the circumstances of the country. Mr. Irving mentions some figures by which we may judge very fairly. At the present day, Holland is not, we should say, a cheap country for the tourist, but with our recollection of prices in various parts of the Netherlands, we should say that four Guilders, *i.e.*, eight francs, for a "very good dinner," including a couple of bottles of wine, at the hotel at Ter Goes, in South Beveland, was as moderate a charge as might be looked for in these piping times of peace. Ter Goes, it is true, is spoken of as clean and bespeaking wealth; but moderation is not always to be found in such places. Financially, it is to be feared, we did not treat the inhabitants at all well, except where we made specie payments. Mr. Irving, who had a considerable reputation as an Economist and Financier, was several times consulted by the Commissary General as to his arrangements, and Mr. Irving's opinion was given against the Government. To force the unfortunate inhabitants of a country suffering from a two-fold army occupation to accept Bills on London at par, at a necessary loss of "upwards of 18 per cent.," as our Government did, was clearly practising extortion, and it is pleasant to have to record Mr. Irving's dissent, and earnest recommendation of as much specie payment as possible, a course which, he rightly said, would create confidence. .

The drawing of Bills at par was, as Mr. Irving justly characterised it, "an act of positive injustice," and it was therefore an act which we were not justified in by our position as an Army of occupation, except on the mere ground of "might makes right," a ground which is happily



losing favour among Publicists. We can only regret that the Member for Bramber had no official *status* with the Expedition to Walcheren, and that his protest and his advice were alike simply the protest and the advice of an independent English gentleman. Morally, however, they are none the less valuable, and historically they have a value as an indictment against the Financial instructions of the Ministry for the conduct of the Expedition.

It is perhaps well that Lord Castlereagh, who came down to Dover and dined with the Commander of the Expedition on board the Flag-ship, the *Venerable*, did not carry out his openly-expressed desire to accompany the force, which he thought, on the whole, would not be "correct for him in his position as a Cabinet Minister." It would have been, to our mind, far less "correct" for one occupying such a position if he had gone, and had personally endorsed the instructions of his colleagues at home as to the issue of Bills at par to the inhabitants of Walcheren. There is, of course, just a chance that, away from Downing Street influences, Lord Castlereagh might have yielded to the remonstrances of Mr. Irving, but the chances, we fear, are much more in favour of a Minister upholding his colleagues, even though he may think their course on a given point morally wrong.

The scenes recorded by Mr. Irving in his narrative are, as might be expected, full of striking contrasts. We have on the one hand accounts of the Theatre at Middleburg, a "neat" house, which appears to have kept open during our occupation, though "very few of the inhabitants" seem to have supported it at that time. On the other hand we have the darker side of the picture, in the account of Churches filled and roadsides strewn with the killed and wounded—both "afflicting" sights to the non-combatant onlooker who records them.

The general feeling as to War, induced by his share in

the Walcheren Expedition would no doubt have led Mr. Irving to sympathise with such a Paper as that which was presented by Hon. D. Dudley Field to the recent Heidelberg Session of the Institute of International Law, on the "Amelioration of the Laws of War," and which we hope shortly to place before the readers of this *Review*. We have said, at the outset of the present article, that the main object of the Walcheren Expedition—the restriction of the Port of Antwerp to commercial purposes—was secured to us by the Treaty of Paris, 1814, and that, substantially, we should no doubt have attained that object without the losses incurred at Walcheren. The warning of the Expedition is all the more impressive, and it gains in impressiveness in the calm, impartial narrative of the late John Irving, M.P.

## VI.—INTERNATIONAL COPYRIGHT (U.S.A. AND CANADA).\*

SINCE the meeting of the Hamburg Conference of our Association, in 1885, the progress made in regard to International Copyright as between Great Britain and the United States has been but slight.

The Hawley Bill, which it was felt we might fairly recommend to our American Members as worthy of their support, is still, it is believed, before Congress. But it has a rival in the Chace Bill, which is also believed to be still before Congress.

As between these two Bills, both introduced by Senators, while the Dorsheimer Bill, referred to in the Report on Copyright presented to our Hamburg Conference, was introduced in the House of Representatives, the course

\* A Report presented to the London Conference of the Association for the Reform and Codification of the Law of Nations, July, 1887.

most in consonance with the object we have in view seems still to be the support of the Hawley Bill, in its original form, with only such modifications as experience may shew, to be desirable from the Dorsheimer Bill. It does not appear practicable to introduce any modifications from the Chace Bill, or to fuse the Chace and Hawley Bills, without utterly destroying the character of the Hawley Bill. If the special trade interests protected by the Chace Bill, require to be protected in any measure in favour of International Copyright which is to have a chance of passing into law in the United States Congress,—as some American publishers have recently stated to be their belief,—then, the Chace Bill, and not the Hawley Bill, is likely to pass. On this point, the language of Mr. J. W. Harper, Junr., of Harper and Brothers, as given, from the *New York Tribune* of April 3rd, 1887, in the *Publishers' Weekly*, of New York, for 9th April, 1887, is worth recording here, as the language of a member of an American Publishing House, whose name must always be associated most favourably with the movement in favour of International Copyright.

Mr. J. W. Harper, in replying to questions put to him on the subject, spoke as follows.

“As to International Copyright, there are [we may take this as true at the time, viz., April last, and substantially, it is believed, at the present moment] two Bills before Congress, the Chace Bill and the Hawley Bill. The Hawley Bill seems to be on the whole intrinsically the better: but the other Bill looks more practicable, as it conciliates the known protection feeling. The Hawley Bill, is the clearer and easier, and the more direct, and it conforms to our Copyright Statute. The Chace Bill conciliates the protection sentiment in favour of the printer, the paper-maker, and the binder, and I suppose it would probably have the better chance in Congress. I think that Publishers generally will favour an International

Copyright Law." Mr. Harper's distinction between the two Bills is valuable as coming from an American source. It is certainly, on Juridical grounds, favourable to the Hawley Bill on every point on which the distinction is drawn.

Mr. Harper, it may be proper to add, admits that International Copyright would have the effect of making books dearer, but he believes that there would be not only more books, but also more good books, owing to the greater inducement which would be held out to authors under a Copyright Law. He also believes that it would be a benefit for the United States thus to fulfil the original intention of the Copyright Law, as announced in the Constitution of the United States, to furnish incentives and inducements to authors. "By an International law," Mr. Harper justly remarks, "we hold out inducements not only here but abroad, and production would be stimulated through the offering to authors of greater and more assured rewards. The author and the public would get the benefit of this."

It seems obvious that the arguments in favour of International Copyright are practical as well as theoretical, and it is on all grounds much to be desired that Congress should before long pass some measure granting Copyright to aliens.

The question is one which affects our own Colonies in North America, as well as our Home interests. The *Publishers' Weekly* of New York, in a more recent number than that from which the above information as to the present position of the Copyright movement in the United States is taken, shews that the Parliament of the Dominion of Canada is anxious for powers to legislate on Copyright. We read in the *Publishers' Weekly*, N.Y., for 23rd April, 1887, in an extract from the *New York World*, that the following question was put in the Dominion Parliament

by Mr. Edgar, on 18th April:—"Whether it was the intention of the Government to lay before the House this Session any measure of legislation for placing Canadian publishers upon the same footing as American publishers in regard to the reprinting of British Copyright works, or whether it was proposed to invite the House to address Her Majesty upon the subject of modifying any Imperial legislation which is restrictive of the powers of the Canadian Parliament respecting Copyright in Canada." We learn that the Minister of Justice stated in reply, that "this important subject was now engaging the attention of the Dominion Government."

At present, as the *N. Y. World* adds by way of comment upon the above facts, "Canada cannot legislate in matters affecting Copyright." Concurring with the Canadian Minister of Justice in feeling the subject of International Copyright to be indeed an important one, we commend it to the attention of our Canadian members no less strongly than to that of our members in the United States.

C. H. E. CARMICHAEL.

## Quarterly Notes.

### **Divorce and Subsequent Marriage in International Law.**

Amongst the many subjects which were brought under discussion at the recent meeting of the Institute of International Law at Heidelberg, none was of more immediate concern to the domestic interests of Christian countries than the question of the International recognition of sentences of Divorce. "Marriage," as Lord Westbury remarked, in *Shaw v. Gould* (L.R. 3 H.L. 82), "is the very foundation of civil society, and no part of the law and institutions of a

country can be of more vital importance to its subjects than those which regulate the manner and conditions of forming, and if necessary of dissolving, the marriage contract."

The anomalies in Marriage and Divorce laws existing not only in different parts of the United Kingdom, but also in the Colonies, have frequently given rise to perplexing difficulties and to results which can only be called deplorable, whether regarded from the Juridical or the Social aspect. Whilst then, on the one hand, Continental Jurists have been debating this branch of the Law from a purely abstract and theoretical point of view, it will be seen, on the other hand, that our English Tribunals have not been behind-hand in giving practical effect to considerations which may bring it into closer harmony with General International Jurisprudence. English Judges, be it said, have been peculiarly hampered in their efforts to settle the law upon a broad and scientific basis by the effect, or, perhaps it would be more accurate to say, the supposed effect, of a number of precedents, the principal of which is *Lolley's Case*. That decision appears to have been for some time regarded as laying down the rule that the law of this country does not recognise the right or authority of any Court, whether domestic or foreign, to dissolve an English marriage (using those words in the double sense of a marriage celebrated in England and a marriage performed with a domiciled Englishman) for any cause or upon any pretext whatsoever; and that any decree, judgment, or sentence of any Foreign Court purporting to dissolve such marriage was to be treated by English tribunals as a mere nullity. Such a proposition was soon seen to be clearly at variance with the plainest principles of International Law, and lawyers of the highest Judicial eminence applied themselves to the task of paring it down in a series of decisions commencing with

*Warrender v. Warrender*, in 1835, and ending with *Shaw v. Gould* in 1868. From these cases the principle deducible is, that English Courts will not recognise the decree of a Foreign Court dissolving an English marriage, unless the parties have obtained a domicile in the country where the decree is pronounced. So matters stood until 1878, when *Niboyet v. Niboyet* (4 P. & D. Div. 1) was decided. The ruling of the Court of Appeal in that case, by a majority of two to one, the dissentient Judge being Brett, L.J., now M.R., may be said to have given the *coup de grâce* to the theory, until then current in the profession, that there was no jurisdiction without domicile. Upon that occasion, the Court held itself competent to grant a divorce to an Englishwoman, married at Gibraltar to a Frenchman, who, although the matrimonial home was in this country, had never acquired an English domicile. In vain did Mr. Dicey in his learned work on *Domicil*, strive to make this decision square with those from which he deduced his proposition that Divorce depends upon Domicile, endeavouring to minimise its effect by describing it as a judgment founded upon circumstances altogether exceptional. But to no purpose. Although at the time there may have been some hesitation in accepting it as the true rule of the Court, those doubts appear to have been dispelled when, in 1882, the Law Lords, in deciding *Harvey v. Farnie* (8 App. Cas. 43) spoke of *Niboyet v. Niboyet* in guarded though not disapproving language. The latest authority for the proposition that *bonâ fide* matrimonial residence confers jurisdiction to decree divorce is *Ingham v. Sachs*, reported in 57 L.T. 920, so recently as 27th August, 1887.

The material facts were as follows:—S., a natural born and domiciled Austrian subject, and a Roman Catholic by religion, contracted a valid marriage in Berlin with a lady whose domicile of origin was Prussian. This marriage which, by the law of Austria was absolutely indissoluble, was subse-

quently dissolved in Berlin by mutual consent, on a petition presented by the wife. S. subsequently married in England an English lady, his first wife being still alive. The second wife petitioned the Divorce Court for a decree of nullity, on the ground that the Berlin decree of divorce was invalid. The Court (Butt, J.) held that the Berlin divorce was good, and consequently that the second marriage was good also. Hence we may believe ourselves warranted in treating the principle of law as now finally settled, that a sentence of divorce pronounced between persons *bonâ fide* resident, though not domiciled, within the jurisdiction where such sentence is pronounced, and unimpeachable for fraud or collusion, is not only effectual within that jurisdiction, but is also entitled to recognition in the English Courts, notwithstanding that the dissolution was decreed upon grounds which would not be admissible or sufficient in England. The above proposition, it will be readily perceived, is of much wider scope than the proposal of Von Bar and Brusa (*Revue de Droit International*, Vol. XIX., p. 244), submitted to the Heidelberg Congress, Art. 7. of which provides that "Le divorce dûment prononcé par le tribunal compétent *national* est reconnu partout," because, there, Political nationality (presumably that of the husband) is made the criterion for Personal law and jurisdiction. Perhaps we are not far wrong in surmising that this principle of nationality accords with the view of Mr. Westlake, seeing that, in 1880, he suggested that the British Parliament should legislate in the sense indicated by the clause above-mentioned (See p. 76 of Westlake's *Private International Law*. London. 1880). Looking, however, at the current of authority since that date, the expediency of any such measure may well be doubted, for the enforcement of the principle of nationality would, we think, seriously restrict the far-reaching effect of the salutary rule recently laid down by the English Courts.



Indeed, we cannot but admire the courage, too rarely exhibited, which our judges have evinced in escaping from the Procrustean bed of the earlier decisions without having found it necessary to have recourse to that cumbrous and uncertain instrument, the Legislature.

In the palmy days of Roman Divorce, as Professor Muirhead tells us in his *Historical Introduction to the Private Law of Rome*, a happy couple consisted on one occasion of a bridegroom who had been previously married twenty times, and a bride previously married twenty-two times. We are probably still a long distance from arriving at a condition of society such as that just described. But, as illustrating the endeavours which are being made in this country to remove impediments to the subsequent marriage of divorced persons, and viewed in connection with the proposition of Von Bar and Brusa that "l'époux divorcé pourra, dans tous les cas, contracter mariage, si cet effet est attribué au divorce par la législation du Tribunal du divorce," the case immediately following that last quoted is instructive.

In *Scott v. The Attorney-General* (57 L.T. 924) the parties, who were domiciled and married in Ireland, were divorced by one of the Courts of the Cape of Good Hope. By the Roman Dutch Law, however, "which is the Common Law of the Cape, a personal disability to marry again is affixed on the guilty party, at any rate so long as the innocent party remains single. In this case, nevertheless, the guilty party did subsequently marry the co-respondent in England, and it was held by Butt, J., applying the principles laid down in *Harvey v. Farnie*, that the personal disability no longer attached after removal out of the Colonial jurisdiction, and that, therefore, the marriage in England was a valid marriage. Hence, we see that English Law is far in advance of the proposal of Von Bar and Brusa, and there is reason to think that those distinguished Jurists would be

wise in dropping the suggested limitation, and thus bringing their article into conformity with the Practice of the English Divorce Court.

[\* \* \* We think it right to mention, by way of precaution, that one of the recent English cases relied upon by our contributor in the above Note, that of *Ingham v. Sachs*, has been referred to in the pages of our esteemed Austrian contemporary, the *Juristische Blätter*, of Vienna, for 23rd October, 1887, in language which leads to some doubt in our mind whether the whole of the facts, as they were known on the Continent, were before the Court in this country. Thus, there would seem to be no doubt that Sachs was a domiciled Austrian resident in Vienna, and that his first wife—married in Berlin after a brief acquaintance made there—was a Prussian subject, whose religious confession does not appear, and that the divorce in the Prussian Courts was obtained by means of a journey to Berlin, followed by a purely collusive residence, simply in order to come within the jurisdiction. It would therefore seem to follow that the Prussian divorce was really obtained *in fraudem legis terræ* by two parties, both subject to Austrian Law, the one by domicile of origin as well as residence, the other by the matrimonial domicile and by the new nationality acquired at marriage. We may, under these circumstances, return to the consideration of the Foreign aspects of *Ingham v. Sachs* as likely to be somewhat of a *cause célèbre* in International Law.—ED.]

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#### **Some Recent Criticisms on the Land Transfer Bill, 1887.**

We have received two pamphlets (*The Land Transfer Bill*. By JOHN PYM YEATMAN, of Lincoln's Inn, Esq. Temple Company, 1887. *Report of the Nottingham Incorporated Law Society upon the Land Transfer Bill*, 1887. Nottingham, Mounteney.), consisting principally of vehement protests

against the Land Transfer Bill, which has since been withdrawn. Mr. Yeatman's strictures, however, are followed by a few pages in which he puts forward what he considers to be a "True system of land transfer." Premising that "No system of registration of title will satisfy the demands of the public which does not enable each one to be his own Conveyancer"—briefly, which does not give a Parliamentary title, and at the same time "abolish the solicitor's bill of costs," he submits that these objects might be effected by reviving Fines, and making them the only means of passing the legal estate. Mr. Yeatman admits that nobody could be bound except the transferor and those claiming under him, and that the equitable interest must take care of itself, but he is still of opinion that all the useful ends of registration would be attained. We cannot help feeling a little sceptical as to the solicitor being ousted in such a case; but, apart from this, we fear that the great objects of registration, which are, we apprehend, simplicity and safety, would be as far out of sight as ever. There would be no investigation of the transferor's legal title—that Mr. Yeatman puts very plainly—the effect would therefore be merely to remove one person from the number of possible claimants to the legal estate. We may be in error, but it certainly does seem to us that a purchaser would find it necessary to investigate the equitable title as against all the world, and the legal title as against all the world except the transferor. The Nottingham Society find fault with almost everything in the Bill, but the most practical objection which they bring forward is, we think, the burden thrown upon the land-owner in having to incur the expense of obtaining registration as a condition precedent to bringing his property into the market. Whatever may be the prevailing view as to the utility and propriety of a compulsory system of registration involving the expense of investigation of title, it will perhaps be

admitted by most people that the whole burden of expense should not be thrown on the registering owner, or even on the land generally. How to escape the difficulty is a somewhat hard problem, but perhaps it admits of solution. It may be assumed that a proper system of registration will, in the course of a few years, make the transfer of land much less costly than it is at present. The problem, then, is to find an equitable way of dividing the immediate expense between the registering proprietor and the future owners, in the proportion of the benefits which will accrue to them respectively. Translating this into practical language, the registering proprietor should pay an equivalent for the improved value of the land on his title being registered as a good one, and the remaining expense should be borne by the public. This idea proceeds from a member of the Bar; we are not aware that it has ever appeared in print. It impresses us favourably at first sight, as being just in motive; but we have some misgiving as to the possibility of ascertaining a true principle for the division of the expense. Further reflection, however, may suggest a feasible method of adjustment; and, this done, one of the principal difficulties in the way of registration would be removed.

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#### **Prisoners as Witnesses.**

Ever since the endeavour to pass the Criminal Code Bill failed, hardly a year has been allowed to pass away without the agitation being renewed in favour of an Act of Parliament abolishing the present rule which prevents prisoners from appearing as witnesses on their own behalf. As a result of this agitation, several recent Statutes dealing with special offences have had inserted in them a proviso enabling the accused to give evidence when he is so minded. A notable instance of the infringement of the old Common Law Rule is that of the Criminal Law Amend-

ment Act, by virtue of which so many Prisoners have tendered themselves as witnesses that we are in a position to form a pretty accurate idea of how the system would work in the event of its becoming a principle of universal application. What has been our experience? Simply this: It constantly happens that after having gone into the witness-box and emphatically denied the charges against them, Prisoners are nevertheless convicted. Why? Because in nine cases out of ten Juries treat the testimony of the accused as absolutely worthless, seeing that they have everything to gain and nothing to lose by false swearing. Nothing, at least, except the faintest of faint chances of a prosecution for perjury. Cross-examination, we were told, was to be the instrument which should lay bare falsehood, but unfortunately we have learned that it has no terrors for the unscrupulous. A man who is prepared to tell one lie will probably not stop short at a dozen. With the knowledge now acquired, Government might well reconsider the advisability of again introducing their measure of last year, having for its object the admissibility of the evidence of accused persons.

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#### **Copyright: Authors and Publishers.**

The questions connected with Copyright are mainly questions interesting Authors and Publishers. The feeling between these two classes is not always so friendly as it might be, and it is always difficult in such cases to apportion the blame justly. There can be no doubt that any antagonism between Authors and Publishers tends both to discourage production at home, and to seriously injure the prospects of Copyright relations with other countries. Such a Society as the Incorporated Society of Authors has before it, therefore, a wide field of utility to the Public, as well as to the special class whom it seeks to

represent. The Society appears to us to be constituted somewhat too closely in imitation, allowing for difference of local circumstances, of the "Société des Gens de Lettres," in Paris, which was the parent, practically, of the International Literary Association. There are some features of the original French Society which, we fear, the English Society has not been sufficiently careful to avoid. They have been to some extent followed also by the International Literary Association at its head-quarters in Paris, and have to that extent, we believe, marred the usefulness of all three Societies. It appears to us not to be the work of any such Society to endeavour to constitute itself the sole medium of communication between Author and Publisher. To undertake this is to undertake too much, and therefore to run great risk of failure. It is also, to our mind, an undesirable interference with the freedom of contract, and likely to arouse an unnecessary feeling of opposition among Publishers.

That such a feeling has been aroused is evident, from the statements made by Publishers at the time of the Conferences organised by the Society of Authors—meetings very useful in themselves, and in which well-known representatives of both sides took part. It is also evident, from the criticisms passed on the Society and its working by the author of a Pamphlet which has been for some time familiar to most persons who take an interest in the Copyright Question (*Copyright National and International with some Remarks on the position of Authors and Publishers*. By a PUBLISHER. Sampson Low, Marston, Searle, and Rivington. 1887), and which itself proceeds from the pen of a Publisher.

The "Supposed antagonism between Authors and Publishers," says the writer of this interesting Pamphlet (p. 44), "is as old as the days of Dryden and Pope, the Tonsons, Lintots, and Curlls; but this antagonism has always been

more imaginary than real." Here we cannot but think that the author of *Copyright National and International* strikes the key-note of the dissension. There may unfortunately be real grounds for it occasionally, and on such, as we believe, rare occasions, a "Society of Authors" would naturally step in, and be of great assistance. Authors, no doubt, are often very careless in even reading the conditions of the contracts which they make with a Publisher, and they may not always apprehend the full legal import of the terms of the contract. The curious thing is that we have known legal authors themselves in this predicament, uncertain whether they had parted with their entire Copyright or only with their rights in the First Edition. We do not know that any Society could really expect always to save Authors from themselves. It would probably be a wise step on the part of an Author to submit the draft of any proposed agreement to a Solicitor before signing it. If the Society of Authors could induce Authors generally to take such a precaution, it would probably be the means of avoiding many of the supposed causes for antagonism, and inducing a better feeling between Authors and Publishers.

That the Society of Authors may, if it pursues a wise course, have a long and useful future before it, we quite believe, and we shall be very glad to see it advancing in a career of real utility alike to Authors and Publishers. We would have it give young authors sound advice, but we would not have it hold itself out as the sole medium for intercommunication between Author and Publisher. We do not believe that any society will ever attain to that position in this country, and we cannot say that we think it would be desirable if it were possible. We would fain see all traces of bitterness disappear from the attitude of the two classes towards each other. They have really more interests in common than they may even be willing to

admit, and it is certain that the more Authors and Publishers shew a united front, the sooner will the consummation desired by both be attained in International Copyright.

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### The Franzini Case.

If there be any truth in the notion that the Law and its administration are the mirror in which is reflected the spirit of a people, exhibiting most faithfully the measure of their civilisation; and if it be justifiable to look in the metropolis of any State for the high-water mark of its development; then, indeed, the trial of Franzini in Paris would seem to suggest a state of things, both legally and socially, which reflects seriously, not alone upon the chief actors in that ghastly drama, but likewise, to a considerable extent, upon the whole French nation. The details of this, the most sensational of recent *causes célèbres*, are still too fresh in the public memory to need recapitulation, nor is it germane to our present purpose to revert to them. Whatever interest the case possesses for us lies solely in the striking contrast which certain of its phases present when compared with the English system of administering the Criminal Law. The *saturnalia* of the Place de la Roquette, for days before and during the execution, happily could not have been witnessed in England since 1868, the year when public executions were abolished. So anxious, indeed, are we to avoid any pretext for the collection of crowds on such occasions, that it is even contemplated to discontinue the hoisting of the black flag at the moment when the dread sentence of the Law is carried out. Again, we are not aware of any period in our Legal history when the mock burial of culprits was practised in England, nor when special anxiety has been shewn by prison officials, to provide themselves with relics of deceased



murderers. Passing by such incidents as unlikely ever to find a place in our own Criminal annals, we would more particularly draw attention to the methods employed by our neighbours abroad for the detection and conviction of criminals—methods which, though in our eyes savouring of unwarrantable severity, are nevertheless beginning to find favour in some influential quarters here, and which, unless discountenanced by a public opinion awakened to their evils, stand a fair chance of being incorporated in our own Procedure. We are accustomed to boast that it is repugnant to the English theory of penal repression that the public administration of justice should be combined with a secret enquiry, in which the police and their spies bring under the notice of the Examining Magistrate the slightest fragments of conversation which they may have had with the suspected criminal, whether before or after incarceration, or the merest shreds of irrelevant information regarding his previous career which they have been able to ferret out from persons with whom he has come into contact. But is this ancient boast borne out by existing facts? The Explosives Act, 1883, and the Criminal Law and Procedure (Ireland) Act, 1887, are evidences that the assertion is not altogether accurate. No doubt we do not, as in France, require the Examining Magistrate to formulate the results of his enquiry in the shape of an *Acte d'Accusation*, wherein the circumstances and inferences which tell most strongly against the accused are selected, marshalled, and paraded with crushing effect before the jury who are to try him. We affect to be revolted at the sight of a Judge who is invested with, and exercises, the power of putting questions to the prisoner. Our moral sense is said to be shocked at the ethical advice and reflections, the sarcasm and irony habitually indulged in by Presidents of French Courts at Criminal trials, and notably at that of Pranzini. We are

told that there is no reasonable apprehension that such a scene as the following could ever, under any conceivable change in our present practice, be witnessed in an English Court of Justice. "*The President*: You weep, Pranzini?—"*Pranzini*: Yes, for my mother.—"*The President*: She will weep tears of blood, poor woman, when she reads these proceedings. — "*Pranzini*: I am innocent, innocent!—"*The President, to Mdlle. Sabatier*: Make one more effort. His heart may yet be touched. Speak to him of his mother. ". . . . "*The President*: Do not try to fascinate her, Pranzini.—"*The Prisoner*: I am simply looking at her; must I cast down my eyes?"

It is, however, unwise to prognosticate unless we are assured that our prophecy will be borne out by events, and the question that we have to ask ourselves is whether the introduction of a system of interrogating accused persons can be so hedged around with safeguards as to obviate the possibility of any undue advantage being taken of it. No lawyer of practical experience will answer this question in the affirmative. The utmost he can urge is that we ought to be able to rely upon the sense of fairness and humanity of those who are charged with the administration of the Law. So probably we can, in the case of men who have been trained in that capacity, but such an argument leaves out of account the element of ignorance, which is an important factor to be considered. What about our Unpaid Magistracy at Petty and Quarter Sessions? Could they be prevented from employing the Interrogatory, or allowing it to be employed, as an instrument of moral torture? If not, then we cannot but think that the supposed advantages of the Continental system would be more than counterbalanced by the perilous risk we should incur of degrading our Criminal Procedure by painful exhibitions such as have brought discredit upon the Administration of the Law across the Channel.

**The Mayor's Court.**

After much delay and protracted discussion, the Law and City Courts Committee has finally confirmed the nomination of Mr. Roxburgh to the Assistant Judgeship rendered vacant by the death of Mr. Brandon. The Recorder has told us in a published letter that Mr. Roxburgh did not seek the position, but that it was offered him solely and entirely on the ground of his proved fitness for the post, as evidenced by his successful advocacy at Sessions, on Circuit, and in the High Court, his authorship of several excellent law treatises, his distinguished University career, and the highly creditable manner in which he has for nearly a year past discharged the responsible duties of the Assistant Judge. That the selection which the Recorder had made and which the Lord Chancellor had sanctioned was a wise one, we did not hesitate to affirm, whilst the matter was still under discussion, and we therefore feel it a pleasant duty to express our great satisfaction that the counsels of wisdom and impartiality should have triumphed over an opposition whose motives it were now unnecessary to characterise. No doubt there may be a certain amount of heartburning amongst those Members of Parliament, Benchers of Inns of Court, and practitioners in the Mayor's Court who were candidates for the post, and whom the Recorder, to his publicly expressed regret, was compelled to pass over, but it is to be hoped that the inherent difficulties of Mr. Roxburgh's task will not be aggravated by any jealousy or resentment on the part of such disappointed competitors, or of those who were their mouthpieces at the stormy meetings of the Law and City Courts Committee. Before leaving this topic, we cannot refrain from expressing our regret that the Committee should have thought fit to reduce Mr. Roxburgh's salary to £1,200, whilst the amount allowed to Mr. Brandon upon his accepting the office was fixed at

£1,600, and was subsequently raised to £2,000. The duties of the Court are not only responsible—its jurisdiction, unlike that of the County Courts, being unlimited in amount,—but very arduous, far more arduous, indeed, than those of a Stipendiary Magistrate whose emolument amounts to no less than £1,500. When, however, the Court of Common Council shall have realised, as they assuredly will, the important services which Mr. Roxburgh is rendering them, they will, no doubt, see their way to reward him in a manner befitting his high qualifications and the *prestige* of the Tribunal over which he presides.

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#### The Historical Study of English Law.

In these days of Societies there is nothing wonderful in the fact of the foundation of the "Selden Society to Encourage the Study and Advance the Knowledge of the History of English Law." There is no doubt much to be done in this direction, though a good deal has been accomplished since the days of the *Hero eponymus* of the Society, who is not by any means always a safe guide now, in the light of later researches. We are glad to see that the first volume promised by the Society is a Collection of Thirteenth Century Pleas of the Crown, to be translated and edited by Mr. F. W. Maitland, M.A., an old contributor to this *Review*, and who has already brought out an interesting volume of *Pleas of the Crown for the County of Gloucester*, 5 Hen. III. (London. 1884). More work of the same kind is promised from the stores of inedited Mediæval Records, and we can only hope that the Selden Society will be true to its programme, and, avoiding all temptation to wander into easier paths, adhere to the special work of giving us inedited texts carefully edited. For such a Society there is ample room.

## Reviews.

*A Treatise on the Law of Bankruptcy in Scotland.* With an Appendix containing Statutes, Acts of Sederunt, and Forms. By HENRY GOUDY, LL.B., Advocate. Edinburgh. T. and T. Clark. 1886.

If the bulky tome of Mr. Goudy does not comprise within its consideration all the possible positions in which creditors may be placed in regard to their defaulting debtors, it may still very fairly claim to hold within its pages the greater part, if not "the whole of the Law of Insolvency and Bankruptcy in Scotland." For though the subject of the winding-up of companies is excluded, the reason given would seem to be sufficient—that the existing Treatises relating to it in England and Scotland, rendered the further increase of the volume for that purpose undesirable.

The Law of Bankruptcy in the northern part of the Island has of late years felt the Parliamentary hand in the passing of several statutes between 1880 and 1884, and a comprehensive survey of the Law now in force was to be desiderated. Examining the volume before us, the task which Mr. Goudy set himself has, so far as we can judge, been well performed. The various heads are, for practical purposes at least, conveniently arranged; the whole work being divided into six Parts, thus respectively described:—"Insolvency, and its effects;" "Notour Bankruptcy, and its effects;" "Sequestration," including under this head Composition Contracts, and Deeds of Arrangement; "Cessio and Trust Deeds;" "Ranking of Securities and Preferable Debts;" while the sixth Part comprises "Imprisonment for Debt, International Law of Bankruptcy, and Criminal Bankruptcy." This division of the subject is preceded by a short and useful Introduction, containing a narrative of the leading statutes bearing upon Scottish Bankruptcy down to the present time. Inasmuch as the English Statute of 1883 contains express provisions relating to Scotland, the author necessarily takes note of that Statute; and, amongst others, sections 117—119, relating to the reciprocal enforcement of the orders of the Courts of England

and Scotland are quoted. But we are glad to observe further that, as occasion arises, reference is made to such of the English judicial proceedings or expressions as appear to correspond with those of the Scottish Courts. Thus authorities are given, or observations made, as to "Notour Bankruptcy" in respect to an "Act of Bankruptcy" in England, to "Sequestration" in regard to our "Adjudication," and an opinion is hazarded as to the effect of a mere Receiving Order in constituting "Notour" Bankruptcy. We have allusions also to the provision of the English Bankruptcy Act of 1883, sec. 54 (4), by which the certificate of the appointment of a Trustee in Bankruptcy in England is declared to be a conveyance, and may be registered as such in Scotland or elsewhere. It seems strange, however, that among the excerpts from the English Act of 1883, place should not have been found for sec. 14, by which the Court, on finding that a majority of creditors in number and value reside in Scotland, and that other circumstances intervene, may, after Receiving Order made, rescind such Order and stay proceedings. The technical terms occurring in the course of the work are no doubt correct, but they require at times rather close attention from the southern reader. The term "litigiosity" we did not venture to treat as indicating a litigious tendency in the English sense, nor were we misled, if we were amused, on finding that at one time creditors engaged in a "competition of Diligences" established a preference by being "first in the race." But the affirmative meaning is not at first very apparent. It becomes clear, however, that "litigiosity" is applied in reference to the subject matter of litigation, or to a security, after diligence executed, when it is said to be "litigious." Still, we should feel a kind of shock on hearing of a "litigious" cart-shed. The law of "Compensation," originally confined to "liquid" obligations only, as now modified would seem to correspond very nearly with the law of "Mutual Credit" in our own system, or with the statutory rule of Set-Off. The author laments that there is not in Scotland, "as in England," a consolidation of the Law of Bankruptcy; but we can scarcely recognise that we have in England the advantage of true consolidation. If over the Border the Statutes in force range from 1621 to 1884, the English Bankruptcy Act of 1883 specifies in one of its schedules a variety of Acts still in force, and informs us that we still require the assistance of a Parliament of Edward I. It were to be wished, indeed, that on so

important a subject, the laws of the two countries could be respectively reduced to one Statute, or better still that the two should form a single Code. Seeing that a *rapprochement* of the Bankruptcy Laws of England and Scotland has been long desired by the mercantile classes of both kingdoms, and in some degree attained by the Legislature, and bearing in mind that the social and commercial relations between the different parts of the United Kingdom are rapidly increasing, we cannot avoid taking notice of a movement at the present time altogether antagonistic to the idea above suggested. For if separate Legislatures be established in Scotland and Ireland, the necessary effect must obviously be, not uniformity, but diversity of laws, with the inevitable result of frequent misapprehension of the rights of parties, conflicting jurisdiction, and increase of litigation. Without pronouncing either way upon the great question of the day, we think this is an aspect of the case that the public men of the contending parties might well regard with some of the attention which the subject undoubtedly deserves.

In dismissing Mr. Goudy's book we may add that there is an excellent Appendix, wherein are collected valuable Notes issued by the Accountant in Bankruptcy for the guidance of Trustees in Sequestrations, and the like for Commissioners under the Scottish Acts of 1856 and 1857. Here also we find an extensive list of Forms in Sequestration and *Cessio*, the statutes in force, and other information. The Addenda and Corrigenda are rather inconveniently placed at the latter end of the volume between the Table of Forms and List of Cases, and they require to be searched for. We would suggest that in a future edition the Table of Contents should specify the existence and locality of the Addenda, Corrigenda, Abbreviations, List of Cases, and Index.

*Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.* Fifteenth Edition. By MAURICE POWELL, M.A., Barrister-at-Law. Stevens and Sons; H. Sweet; W. Maxwell and Son. 1884.

This is a work which it is difficult to criticise, because embracing, as it does, such a multitude and variety of matters, there would not probably be found two lawyers who could agree as to what ought to be included or omitted. That it is serviceable on Circuit, where Reports and Text-books are not at

hand, will be acknowledged by most practising members of the Common Law Bar. Higher than this, however, we cannot place its claims. To the familiar *Roscoe* may perhaps be appropriately applied the epithet often applied to old and familiar friends: it has the defects of its qualities. That is to say, in order to bring it within the compass of two compendious volumes (developed out of the original single volume), it has not been possible to treat any one subject exhaustively. It would assuredly have been better if, in a work of such dimensions, each volume had been supplied with a separate case and subject Index, instead of one general Index being made to do duty for both. The paucity of reference to Equity principles and the meagre number of Equity cases cited, cannot but be deplored, though perhaps their incorporation was impracticable within the limits assigned. Still, the necessary limits of size might probably have been at least partially respected by omitting many of the older decisions, and allusions to practice before and under the Common Law Procedure Acts, which have now become ancient history. To the intelligent New Zealander, or any other equally distinguished foreigner of the future, consulting this work as a Digest of our present Procedure, the fusion of Law and Equity, contemplated by the Judicature Acts, would probably appear to have turned out a complete myth. We regret to note in the present edition many omissions, both in reference to Case Law and Statute Law, but what we have chiefly to regret is that "the Editor of this, the fifteenth edition, has been deprived of the invaluable co-operation of Mr. Justice Day, who, owing to his elevation to the Bench, has been prevented from taking the same part in its preparation that he did in respect of the three previous editions of this work." When we reflect upon the activity of some of his colleagues on the Bench in the varied fields of Theology and the Humanities, we are not without hope that the next edition of *Roscoe* may once more enjoy the advantage of the supervision of Mr. Justice Day.

*A Treatise on the Animal Alkaloids.* By A. M. BROWN, M.D. Baillière, Tindall, and Cox. 1887.

When criticising Professor Tidy's *Legal Medicine* in the pages of this *Review*, attention was directed to what we regarded as a



serious omission from that elaborate Treatise, viz., his failure to make even a passing reference to researches in a field apparently so rich in promise for the future study of Toxicology as that of the animal alkaloids. This topic has now been exhaustively treated in the work before us, containing as it does all that is at present ascertainable respecting these recently discovered poisons. Dr. A. M. Brown divides his work into three sections, viz., (1) ptomaines, or cadaveric alkaloids, (2) leucomaines, or vital alkaloids, each treated under their chemical, toxicological, physiological, and medico-legal aspects, and (3) leucomaines, or physiological alkaloids, in their relation to physiology, pathology, and clinics. But, it may be asked, what are these ptomaines and leucomaines? The celebrated French physiological chemist, Professor Armand Gautier, who has contributed a Preface to this volume, was the first to shew that in the dead animal tissues, processes of putrefactive decomposition set in by which certain alkaloids are elaborated from the proteid substances; and, further, that in the living animal tissues, and that by virtue of their vitality, certain other alkaloids analogous to the ptomaines are developed. Both species of alkaloids are poisonous in their action upon the human system.

To this distinguished physician, as Sir William Aitken calls the author in his *brochure* summarising the labours of Dr. Brown, is due the honour of opening up to the view of the English medical profession a fresh scientific territory only just beginning to be explored, and one which is calculated to render obvious certain modes of origin of many forms of disease hitherto uncertained with any degree of method or precision.

But it is with the medico-legal aspect of the subject under discussion that we are more immediately concerned, and upon this branch Dr. A. M. Brown has much that is of importance to communicate to us of the results of recent research, reminding us, *inter alia*, of the celebrated trials for criminal poisoning of General Gibbone in Italy, and Brande-Kerbs in Germany, cases in which Selmi and Otto by means of their previous researches were enabled to detect the presence of ptomaine alkaloids, and thus successfully to contest the conclusions of the experts called by the prosecution. Enough, we hope, has been said to indicate the high interest which the present volume must have for the student of Medical Jurisprudence. It only remains for us to mention that the value of the work is enhanced by an excellent bibliography.

*Leading Cases in Modern Equity.* By THOMAS BRETT, LL.B., Barrister-at-Law. Clowes and Sons. 1887. •

We must confess that we have no very great liking for "Leading Cases." Since the great Mr. Smith's time the idea has been a little overdone, and some of his modern followers have not been conspicuous for their success. But having taken up Mr. Brett's book with some feeling of disfavour towards the method he had adopted, we have laid it down with none but favourable and pleasurable feelings at the excellent manner in which he has accomplished his task. And we frankly admit that the subject he has taken in hand, Modern Equity, scarcely admitted of any other treatment. The principles of Equity are perpetually growing; they are modified in one direction, amplified in another, according to the exigencies of the time and the circumstances to which they have to be applied. It is therefore of the very first importance, both to the student and the practitioner, to have these principles collected in a handy form; and this want Mr. Brett has supplied. No amount of noting-up of old text-books, no digests, however carefully prepared, could furnish the easy and ready reference which is necessary. And in every respect this book is worthy of its author. The head notes are short and to the point; they contain nothing but the simple statement of the principle of the decisions, its kernel divested of all the husk of facts; the notes to the cases are admirable in manner and lucid in language; and no little pains seem to have been bestowed in the arrangement of the cases themselves. We may note especially the contiguity of *Rogers v. Ingham* and *Cooper v. Phibbs*, and of *Speight v. Gaunt* and *Barnes v. Addy*. This is a small matter, but it adds much to the value of the book. Before parting from Mr. Brett, we have one suggestion to make, and that is that the notes to *Redgrave v. Howe* should, in the next edition, be much expanded. The question of Misrepresentation and Fraud cannot be too fully treated.

*An Introduction to the Principles of Equity.* By JOSEPH A. SHEARWOOD, of Lincoln's Inn, Barrister-at-Law; assisted by CLEMENT SMILES MOORE, of the Middle Temple, Barrister-at-Law. Stevens & Sons. 1885.

This is, we should think, a very useful little book for students; more it does not profess to be, as it is distinctly put forth as

"An Elementary outline," being "intended to be read as an accompaniment, or rather introduction, to larger works, as Arthur Smith's or Shell's Equity, and to facilitate their perusal for beginners, and also a companion volume to Shearwood's Treatises on Real and Personal Property." A convenient and practical feature is the emphasising of the more important or "leading" cases by printing their titles in separate lines and in a distinctive type. We have subjected the statements of cases to the usual test, that is, a comparison with the actual Reports, and they come out of the ordeal with honour. Here and there, it is true, a "slip" may be detected. The authors must not be blamed for treating *Baynton v. Collins*, a decision on the Married Women's Property Act, 1882, as law (p. 69), for the book was published before that unfortunate decision was condemned by the Court of Appeal in *Reid v. Reid*. But in an earlier part of the work, treating of the effect of option on conversion (pp. 31, 32), there is a confusion that is likely to mislead, *Weeding v. Weeding* being apparently distinguished from *Lawes v. Bennett*, whereas the Court insisted, with special energy, on its being, in principle, "on all fours" with that case. The authors, of course, understood these cases themselves, but the language which they have used leaves some doubt as to their real meaning. At p. 32, the operations of the Mortmain Act should have been referred to as an exception to, not as an instance of, the general effect of a conversion. "Boynton" (p. 69), should be *Baynton*, and "Sim. and Stud." (p. 31), should be either *S. & S.* or *Sim. and Stu.* "French v. Macale" (p. 61), and "French v. Macoll" (Table of Cases), obviously cannot both be right.

*A Handbook of Average.* By MANLEY HOPKINS, ESQ. Fourth Edition. Stevens and Sons. 1884.

It may seem rather late in the day for a notice of the Fourth Edition of Mr. Manley Hopkins's valuable work on *Average and Arbitration*, when, having regard to the very true remark in his Preface, that in consequence of the constant change, both in methods of navigation and in the subject matters of insurance, new editions are constantly called for, we ought shortly to be on the look out for a fifth. The earlier editions of Mr.

Hopkins's book are, however, so well known, and his own practical knowledge of the subject with which he deals so great, and so constantly kept up to the high water mark of the subject by every day practice, that little requires to be said in order to commend the present edition. Mr. Hopkins denounces with great vigour at pp. 239—241, the English rule of damages in cases of collision where "both are to blame." It is curious, indeed, to notice that when this rule of the English Admiralty was made the rule of the English Law by the Judicature Act, 1873, it was so made on the alleged ground that it was a General Law of the Sea and of all nations in Maritime Matters, whereas, in fact, at that time, no other civilised state, except the United States of America, had such a law. And it is perhaps even more remarkable that since that date both Italy and Spain, in their new Codes, have adopted that which was the Common Law of England prior to 1873, in the case of ships, and still is in every other case of contributory negligence. In this connection, however, we must be allowed to protest against the introduction of the Americanism, to "collide," and especially against the use of it, at p. 243, if indeed there is not a misprint. "If the ship which collides the vessel insured be in fault," must certainly be wrong. Even if there be such a word as "collide" at all, it must be a verb active. Something must also have gone wrong at p. 249, where Mr. Hopkins, speaking of a long contest which he says ended in the House of Lords, gives as the reference *The Chartered Mercantile Bank of India v. The Netherlands Indian Steam Navigation Co.* (3 B. & S. 873, 5 B. & S. 348). Now the case of the above name is a very good authority for the proposition it is called in to support, but it did not go to the House of Lords, and is not reported in B. & S. at all, but in the more recent reports of 9 & 10 Q.B.D. It is not fair, of course, to blame an author for not being a prophet, and therefore we cannot complain that the effects of cases decided in the House of Lords since the publication of this book, and which will require the revision of most text-books on Maritime Law, are not foreseen. Nor, indeed, can we say what the effect of the Report of the Royal Commission on Saving Life at Sea, just published, may be, if it finds its way into substantive legislation, except that we wish Mr. Hopkins and others would give us an additional chapter on the subject, with references to their present works, instead of a new edition entailing, as we are told in this

Preface, expense on the author, and, we may add, causing irritation to the recent purchaser, and needless labour to the unfortunate reviewer.

*The Annual Review of Mercantile Cases for 1885 and 1886.* By J. A. DUNCAN, Esq. Stevens and Haynes. 1886 and 1887..

We have reserved our notice of the first volume of this book designedly, so as to be enabled to take two annual parts together and compare them. It is always more difficult to review a review than any other species of literary work, but in the present case that labour is somewhat lightened by the fact that, except in the name, the work now under consideration bears no particular resemblance to a review, which, it is presumed, must be taken to mean something in the nature of a criticism, while here we have, what certainly is more useful to the reader, an ample Digest of the decisions in Mercantile Cases. If the military nomenclature may be carried a little further, the book would be more correctly entitled "The Annual Muster" or "Annual March Past" of Commercial Cases. We are inclined to think that the book will be found very useful by (1) that small but fortunate class of lawyers who are too busy to read up the regular Reports, and (2) that larger class who are too lazy to do so, while the notes to text-books and previous cases appended to each case will enable both the above classes for the future to have these text-books and reports noted up by any clerk of average intelligence without troubling themselves to do it. Whether it is for the public advantage that the burden of the former class, or for their own, that the labour of the latter should be thereby reduced, is a matter too recondite to be treated in a mere book notice. We think it would be well if each successive volume commenced by a list of cases mentioned in the previous volume which had been overruled; it is good in a series of this description to draw a pen right through overruled cases, else, in looking at them in a hurry, an unfortunate practitioner may chance to pick up a wrong volume, and so go into Court with a wrong idea of the latest law. Of course, in condensing judgments so as to get at their essence, it is inevitable that some of the literary grace in which they abound should be lost, but still we must protest against the words apparently put into the mouth of Mr. Justice Butt, at p. 101 of the 1885

Edition, that "a shipowner is under an implied warranty of seaworthiness." However, the principle intended to be enunciated is made clear by subsequent words which shew that the warranty applies to the ship and not to the shipowner. A more serious slip occurs in the 1886 Volume, at p. 27, when, in stating the facts of the case of *Thorman v. Burt, Boulton, & Co.*, it is stated that as the goods were *shipped* mate's receipts were given, whereas it was no inconsiderable point in that case that the mate gave receipts for the goods (wood in rafts) as they came alongside the ship, and *not* as they came on board, and that therefore *non constat* that they ever did come on board, as they might have been, and probably were, washed away whilst alongside. But, after making these remarks, we are bound to say that in almost every instance the author of the *Annual Review* has been most fortunate in seizing the exact points of the case, and giving the effect of the judgments tersely, and, at the same time, accurately. The author gives us the benefit of some Scotch decisions; it may be a question whether, in a book of this sort, the decisions of the Supreme Court of the United States are not equally useful, as they shed light on our law, whereas the Scotch cases, except so far as they are decisions on statutes common to both countries, are only useful as those of France or Germany might be, as shewing the view taken by able Judges of what is after all the "highest common sense."

*Law Lyrics.* Second Edition. Alexander Gardner. Paisley and London. 1887.

We have here a second edition of these lively Lyrics, and they will be welcomed, though perhaps previously unknown to many of our readers, the "Law" referred to being chiefly that of Scotland. The author, originally undeclared, still publishes his work anonymously; but we shall not be far wrong, perhaps, if we assume that he is not only learned in the law, but that he has administered that law, and possibly is not unknown among the Sheriffs. However that may be, the little volume before us affords much to interest and to amuse; and though of a type only rarely coming up for notice in these pages, it must not be supposed that there is not abundant material worthy of attentive consideration. For under the form of

Verse our author presents to us his views on many a contested question of the day, and we know that through such a medium Pope thought he could best express his philosophy—and that he was right is almost implied by Voltaire, when he says,

*L'art, quelquefois frivole et quelquefois divin,  
L'art des vers est dans Pope utile au genre humain.*

Notwithstanding the title, a considerable part of the collection is devoted to general subjects, some of which we will take leave to refer to or to quote, sheltering ourselves under the author's own lines—

“For he who knows not when to bend and laugh,  
Has scarcely learnt philosophy by half.”

Speaking generally, we should say that the whole composition is very much in the character of the *Lyrics, Legal and Miscellaneous*, by Outram, also of Northern origin, though perhaps not of equal merit.

Among the Legal and Social subjects dealt with are the Sheriff's Inquisition, where in half serious and half humorous lines the author comments with severity upon that “secret chamber trap;” also the Landlord's Hypothec, Separation and Divorce—so far as the cost thereof affects the poor man,—Entail, Primogeniture, and the Game Laws. In all these and other cases we note that the general tendency is in the direction of Reform, according to the extreme popular view; and undoubtedly, as to most of them, all parties are pretty well agreed that amendments were or are still required, though total abolition is not imperatively demanded. But we are inclined to think that our learned friend cuts too deep with his reforming knife. In the “Game Laws” we have some stern and stirring verses, yet our experience teaches us that the man who shoots game “because he must, when beef and bread have risen,” is a rare character; and that master poacher is usually an idle dog, whose deeds depend not on prices, and whose “wife” may verily “lack a crust,” but is seldom unprovided with blows. The crofter also comes in for a protecting hand, and of course the “greedy Laird” is represented as seizing all that the crofter has put upon the holding,—“barn, byre, and pen; dykes, yetts, and fences.” There is, however, no reference to fraudulent claims made before H.M. Commissioners by the crofters' hired witnesses.



Our author is certainly versatile, for after discharging shots at legal or social targets, he turns not only with equal ease and success, but with sympathetic soul, to the beauties of nature, the feathered songsters of the woods, or the romance of love. He describes, with affectionate interest and quaint Scotch humour, the busy bustling ways of the "wee cock sparrow;" now stops to make sport of the young Advocate with his new wig, to bring us suddenly upon some beautiful lines marked by the exquisite sensibility of the true poet. This he does in the "Scottish Blackbird's" Song, as heard in an ancient wooded shade at "Gloaming's tender hour." Homely matters are touched with his wand, and so we have "Oatmeal" and "Scotch Porridge." In reference to the latter we are told how it may be deftly made, how best partaken of, and how it has developed mighty men, filling the earth "with doughty deeds" of Scotland's sons. Of course Porridge explains Bannockburn, but the following is, we believe, only a physiological fact:—

" For makin' flesh and buildin' banes,  
There ne'er was siccan food for weans,  
It knits their muscles steeve as stanes,  
And teuch as brasses,  
Fills hooses fu' o' boys wi' brains,  
And rosy lassies."

Parts of this composition are evidently modelled on Burns's "Address to a Haggis."

Among the more sprightly effusions we may refer to the very lively numbers of "Robin, O," and can only regret that we have not space to say more about him than that—

" A vauntie lad, a cantie lad,  
A cheery lad was Robin, O,  
As frae the mill and ower the hill  
He rode his grey nag Dobbin, O."

We have already remarked that the Author's views on many of the serious questions of the day are so advanced as to be almost revolutionary. It is only fair to him, therefore, to quote, and that without comment, the first and last stanzas of his "Patriotic Song."

" Ye English, Scotch, and Irish,  
Who to the throne are true,  
A craven gale is striving  
To tear our flag in two.



But to the mast we've nailed it,  
 And none shall pull it down  
 While millions deep our breasts can keep  
 The Union and the Crown.  
 Shall our own hands  
 Undo these bands  
 Our much-loved lands to sever?  
 While shines the sun,  
 And rivers run,  
 No ! Never ! Never ! Never !

\* \* \* \*

Shall friends at home betray us,  
 While foreign foes we scorn,  
 And Ireland's little island  
 From Britain's side be torn ?  
 Not while we are a nation !  
 Not while our hearts are warm !  
 Not while a rag of British flag  
 Can battle out the storm."

The *Lyrics* close appropriately enough with "Sundown ;" after alluding in graceful and figurative language to the closing of certain flowers at the approach of night, thus speaks the author, and so we end :—

"My day is done ! and like impearling dews,  
 Contented thoughts my happy mind suffuse :  
 I smile to mark the conscious drooping head  
 Of each small friend, upcurled, and gone to bed,  
 To sleep, to wake, and rise in fresh array,  
 When the spurred lark shakes wing at break of day."

# THE LAW MAGAZINE AND REVIEW.

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## I.—AMELIORATION OF THE LAWS OF WAR REQUIRED BY MODERN CIVILISATION.\*

**A**N article in the *Revue des Deux Mondes*, written five years ago, by Vice-Admiral Aube, of the French Navy, lately Minister of Marine, contains this passage: "The next naval war, especially against England, will be carried on by cruisers attacking her commerce;" and again, "The empire of the sea will belong to that nation of the two which has the most numerous armoured fleet;" and, further, "Every power of attack and destruction will be employed against all of England's littoral towns, fortified or unfortified, whether purely peace establishments or war-like—to burn them, to destroy them, or to pitilessly ransom them."

If this be a true picture of war as it might now be waged, then it behoves us to strive, every one of us, to avert so terrible a calamity, and if it cannot be averted altogether, then to make war more humane, and more conformable to Modern Civilisation.

By Modern Civilisation, is to be understood the Civilisation of our day; of the year of grace, 1887, more than 1800 years since Christ was born. Notwithstanding the enormous armaments which the nations of Continental Europe have accumulated, till their burden is too heavy for men's shoulders; notwithstanding the preparations,

\* A Memoir presented to the Institute of International Law, Heidelberg Session, September, 1887.

making and augmenting day by day, for a tremendous conflict, the great battle, perhaps, of Armageddon, foretold of old ; notwithstanding all these things, the world is actually at peace. On the American Continent there is peace from the utmost North to the utmost South ; there is peace between the great monarchies of Asia ; there is peace among the civilised peoples of Africa ; in Europe, too, there is peace ; war is waged nowhere between the Orkneys and the Euxine ; and in Australia, fifth and last of the Continents, the people are of one blood, one language, and bound together by one sovereign. The great races are more consolidated than they ever were before. Germany presents a united Empire, saving only the Austrian portion ; Austria-Hungary is undisturbed. Italy is a united Kingdom ; Spain a homogeneous Monarchy ; France a homogeneous Republic ; Great Britain and Ireland are inviolate in their own islands ; Russia is inviolate in her vast North-Eastern dominions ; the lesser Powers, Greece, Switzerland, Portugal, Holland, Belgium, Denmark, Sweden and Norway, are reposing, each in its own autonomy ; Turkey is afraid to move in any direction, lest it displease some of the great Powers ; such is the general aspect at this hour. Slavery has been abolished in every country of Christendom. Though there be elements of disturbance in the Balkan peninsula, and the ever-irritating wound in the flank of France, on the side of the Rhine, the peace is yet unbroken, and the gates of the temple of Janus are shut before the eyes of all the world.

Is there not sense and, withal, spirit enough among men, to prevent the re-opening of those awful gates ? The time is otherwise propitious ; the United States, after the fiercest civil war known to History, have resumed fraternal relations, and are celebrating the hundredth anniversary of their Federal Constitution ; Great Britain is celebrating the Jubilee of the Victorian reign ; France is about to

celebrate the hundredth anniversary of her Revolution, and homogeneous races are, for the most part, resting under governments of their own choice.

Let us, then, appeal to statesmen, to diplomatists, to the leaders of armies themselves, and above all to the people, the traffickers in the markets, the men who toil and spin, the labourers in the workshops and the fields, on whom in the last resort the calamities of war most heavily fall; let us appeal to every man and woman who can help to prevent a catastrophe which may derange the business of the world, give over whole communities to pillage, and hosts of brave men to slaughter.

That differences will arise between nations, as between individuals, is most certain. The nature of the human character, the impetuosity of the passions, ignorance of facts, weakness of judgment, pressure of self-interest, all make it next to impossible that nations should always agree in their opinions or wishes. Hence arise claims difficult to reconcile; rights asserted on the one hand, and denied on the other. How to adjust them is the problem. War never adjusts any difference, it merely subdues; it silences, perhaps, but the roar of cannon is never the voice of reason. Men may continue to repeat, as often as they please, the senseless phrase that war is the last resort of nations, the *ultima ratio regum*, it is nevertheless a phrase wholly false, the wicked forerunner of many a bloody field and many a ruined town.

Where and how is this judge among the nations to be found? There can be but one answer, and that is agreement among the nations themselves to establish a permanent Tribunal, or an occasional Arbiter, chosen for the time being. Nations have no common superior, and cannot be coerced except by compact with one another to which all will oblige each to submit. History has many examples of Arbitration; the precedents of success are abundant; the

measure is reasonable ; it is applicable to every serious question ; it can soothe the most acute susceptibility, and satisfy any demand of honour. Why, then, should it not be accepted ? Why should it not be deemed the last and best resort of nations, instead of that other and false saying, which has heretofore led so many astray and sacrificed so many victims ?

In some happier age, under some more benignant star, there will yet, we would fain believe, be established among men a great Amphictyonic Council of the nations, with a wider sway than the Council of Greece, to which nations will submit, as individuals now submit, with unfaltering deference, as to a Court of Honour.

Shutting our eyes, however, for the moment upon this pleasing prospect, though never forgetting it, let us turn to the next resource, and that is, the amelioration of the Laws of War, if, unhappily, war in some shape should prove to be inevitable, so that the horrors, predicted by the man of war, whose words were quoted at the beginning of this Paper, may never come to pass.

Many persons would prefer the expression Customs of War to Laws of War, because, as they say, there can be strictly speaking, no Laws, where there are no sanctions. Some of these customs, however, have sanctions, a violation of them being punishable by either belligerent, or capable of redress by the courts of all civilised powers. For example, cruelty towards prisoners may be punished by the Government of the country towards whose soldiers the cruelty was practised, as was done by the Government of the United States, in the case of a jailer convicted by court martial of cruelty towards prisoners at Andersonville. And it cannot be doubted that if a belligerent were to attempt reducing to personal slavery captives in war, the courts of the other belligerent, and the courts also of every civilised neutral, would declare the captives free whenever brought

within their jurisdiction. Therefore, though it be true that all the Customs of War have not effective sanctions, yet, because many have them, it is better to call them all, uncertain and variable as they are, Laws of War.

First of all, the circumstances and the civilisation of our age require that it should be deemed a maxim of International Law, that war is a conflict of arms between nations, represented by their armed forces, and not a contest between or against individuals. Each nation would, of course, be competent to deal with its own people as it might see fit, to permit or prohibit business or intercourse between them and the hostile nation or its members, or any other act which might affect its own warlike operations; but neither should be at liberty to wage war upon the unarmed members, or the unprotected property of the other. How far this is to be regarded as law at present may be matter of doubt. One authority has it that "a perfect war is where one whole nation is at war with another nation, and all the members of both nations are authorised to commit hostilities against all the members of the other, in every case, and under every circumstance permitted by the general laws of war," and another authority has it, that "war puts every individual of the respective governments, as well as the governments themselves, in a state of hostility with each other; all treaties, contracts, and rights of property are suspended; the subjects are in all respects considered as enemies; they may seize the persons and property of each other." On the other hand it is confidently maintained, and with far greater reason, that the rule by which private property on land is liable to confiscation, "is restricted to special cases, dictated by the necessary operations of war, and as excluding in general the seizure of the private property of pacific persons for the sake of gain." As for injury to persons, it would be monstrous if, in case of a war between England

and France, for example, a private Englishman, sailing in his yacht along the French coast, were at liberty to shoot at and to kill an unarmed Frenchman on the shore. The whole world would cry out against the outrage, and the offender would surely be brought to punishment, if caught either in England or France. In the formal Instructions issued, during the Civil War, to the armies of the United States in the field, it was declared that "the United States acknowledge and protect in hostile countries occupied by them, religion and morality, strictly private property, the persons of the inhabitants, especially those of women, and the sacredness of the domestic relations." If such be the true rule of conduct for the armies of a nation, much more is it true of its unarmed members.

There are five other important ameliorations of the Laws of War, for which, it is submitted, this age is ripe. Others there are, less pressing for recognition, and less important.

I. It is neither consonant with reason, nor compatible with the material interests of this generation, that the old rule, which discharged all obligations of Treaties between two nations, so soon as they fell into war with each other, should continue to prevail. Men are brought into closer relations with one another than they ever were brought before. They speak together, though they happen to stand on opposite sides of the earth; their ships fly to and fro with almost the swiftness of eagles; it is indispensable that international agreements should be made between nations, and that these agreements when made should not be broken. Men will have canals uniting oceans, and open to all mankind, and they will not suffer these highways to be interrupted by the caprice or madness of those among them who wish to go to war; they will have telegraphs under the sea, and fastened to many lands, and they will not suffer the messages between friendly peoples to be

stopped because other peoples become unfriendly; they will make in peace conventions for mitigating the severities of war, and they will not suffer these conventions to be thrown to the winds so soon as the storm of a conflict sweeps by.

Why should war be held to dissolve the obligations of previous Treaties between the parties? It is not thus in the relations of private life, nor is it so provided in any Code of national law. It may, no doubt, happen that the breach of a particular contract by one person absolves the other party from the observance of dependent provisions of the same contract, but nobody ever yet thought that the breach of one contract discharged all other contracts between the same parties.

The present rule is, moreover, uncertain in the construction put upon it. One statesman insists that "the general rule of International Law is that war terminates all subsisting Treaties between the belligerent states,"—on the other hand an able commentator insists that "if a Treaty contains any stipulations which contemplate a state of future war, and make provisions for such an exigency, they preserve their force and obligation when the rupture takes place." In the Treaty made between Prussia and the United States, negotiated by Frederick the Great and Franklin, near the close of the last century, provisions were introduced to soften the asperities of war, and it was especially stipulated that those provisions, so far from being abrogated by a war, were precisely those which were to come into force when war occurred. There is no good reason why a war should suspend any stipulations between nations except those which provide for a continuance of peace. Conventions for the neutralisation of international canals, for the protection of sea cables, for the beneficent work of the Red Cross Society, are binding upon the faith of nations, however hotly they may be embroiled in war. The rule of reason



as well as the rule of policy should be, that war neither abrogates nor suspends the obligations of a Treaty, nor other stipulations between the parties, except those which are absolutely inconsistent with a state of war.

II. A formal Declaration of war is mentioned by publicists as an essential preliminary to hostilities. There is, however, no prescribed period for the declaration to precede the war, nor is it thought necessary that the declaration should contain a specification of the grievances for which the war is to be waged, and the preliminary itself is not always observed. The Congress which met at Paris in 1856 did indeed undertake to bind the signatories to some proper rules, but little heed seems to have been afterwards given to the action of the Congress. Yet surely the sentiment of our age requires that ample notice should be given, and formal complaint made, before two nations rush into a war, which not only imperils both, but grievously disturbs the rest of the world. Why, indeed, should not the recommendations of the Congress of Paris be extended to all civilised states, and made obligatory, not only in respect of notice from one adversary to another, but in respect of an invitation to all to use their friendly offices for the prevention of hostilities?

That nations should not act like wild beasts, crouching in hiding and silence for their prey, requires no argument. To strike a man behind his back is thought to be unmanly. Why should it not be thought just as unmanly for a multitude of men to strike another multitude without warning? An assassin smites stealthily. May nations act the part of assassins with impunity? Why, indeed, should not a bully among nations be dealt with as we deal with a bully among men?

In the present condition of the European continent, with enormous armies facing each other, almost within a stone's throw, it is of more moment than ever before, that

peace should not be broken without some warning from the aggressor, sufficient at least to put the adversary on his guard, and to let other parties get out of the way.

III. The sack of a place taken by storm, the bombardment of an unfortified town, and the preventing of unarmed inhabitants from leaving a place beleaguered are all acts of such inexcusable and monstrous brutality, that there ought not to be a voice in their favour in all Christendom. Yet they are not positively forbidden, and all have been practised in this century. A beleaguered town contains, it may be, tens of thousands of women and children, and feeble old men; they are not combatants; they could not get away if they would; the besiegers would not let them leave: an army at the gates forces them back into the fiery den, to be killed by the quick method of shot and shell, or the slow torment of hunger. And this is what is called war. This is war according to the approved method! Cannot men be manly enough to confine their assaults to men alone, but must they needs inflict them upon women and children? Shame ineffable upon such barbarity, and accursed be the Laws of War which permit it!

The two excuses made for a sack are not only inconsistent with each other, but most of them are insults to our understanding. One is in substance that besiegers are so exhausted by a long siege that their bravery ought to have the reward of rapine; the other that the besieged have made so obstinate a defence, that their bravery deserves no quarter. Both excuses are made in sheer forgetfulness that the pitiless rapine and slaughter fall on those who have had no part in the defence. The wife is outraged and the child is put to death, because the husband and father was brave.

IV. The capture or destruction of private property on land is condemned by the voice of the Civilised World. Whether private property on the sea should be thus exempt

has been a question much debated. The statesmen and jurists of Continental Europe generally favour the exemption. English statesmen and jurists generally oppose it. Why there should be this difference between property on land and that on water has never yet been shewn. Regarded as a question of reason, there is no room for doubt. If war is to be regarded as a contest of arms between the combatants, it should not be extended to non-combatants. Regarded as a question of sentiment, the result is the same. It is a cruel thing to take from a peaceful citizen his means of livelihood, simply because war is waged against his country. It is abhorrent to our ideas of justice that he should be deprived of his earnings to satisfy the greed of captors. In truth, the practice is nothing but robbery in the name of war. The Government of the United States has always contended for the inviolability of private property on the sea equally with that upon the land. When the Declaration of Paris for the abolition of Privateering was presented for its acceptance, it offered to accept, upon the condition that the abolition of private capture should be extended further,—to the abolition of capture of private property altogether. The arguments which it put forth were unanswerable; they need not be here repeated.

In a despatch of Mr. Seward, Secretary of State, to Mr. Adams, then Minister of the United States in London, dated September, 1861, the Secretary,—while deploring the failure of negotiations then lately pending to ameliorate the law of maritime warfare, from which negotiations he had hoped that “results would flow beneficial not only to the two nations, but to the whole world,—beneficial not in the present age only, but in future ages,” and trusting that “in some happier time the subject might be resumed,”—expressed “the hope that when it comes, Great Britain will not only willingly and unconditionally accept the adherence of the United States to all the benignant articles

of the declaration of the Congress of Paris, but will even go further, and, relinquishing her present objections, consent, as the United States have so constantly invited, that the private property, not contraband, of citizens and subjects of nations, in collision shall be exempt from confiscation equally in warfare waged on the land, and in warfare waged upon the seas, which are the common highways of all nations." At the recent Conference of the Association for the Reform and Codification of the Law of Nations, held at London in July last, a majority of those present being Englishmen, a resolution in favour of the exemption of private property from capture or destruction on the sea to the same extent as on the land, was unanimously adopted. The Governments of Russia and Prussia have repeatedly declared themselves, in the most pronounced manner, in favour of the exemption, and that of France is understood to be inclined the same way.

The justification put forth for the seizure and confiscation of private property at sea is that it tends to shorten the war by increasing its severity. Press this argument to its logical conclusion and it would justify the most barbarous cruelties, at which the humanity of our age would revolt. There are two ways of carrying on war; one the way of savages, the other the way of civilised men. The savage tortures his victims, tomahawks the children, scalps the men, and carries the women into captivity. Here is severity with a vengeance! Why does it not shorten the conflicts between savage tribes, or put an end to them altogether? On the contrary, it keeps the land where it prevails in a state of chronic warfare. Look at Scotland in the good old times, when clan was for ever fighting clan, when the pibroch thrilled the Highlands by night and by day, when the cry for the onset was "give their roofs to the flames, and their flesh to the eagles;" then look at Scotland now, her hills glowing in peaceful beauty, her

plains golden with harvests; and say which condition of society is the most to be desired. Away with the detestable maxim, "make war as destructive as possible, that it may be rare and short," and take to heart that other more humane and more just, which a great French publicist once announced, "do to a country as little harm in war, and as much good in peace, as you can;" the one brings out what there is of bad in man's nature, the other what there is of good.

V. The relations between governments and the governed have in these later days undergone great modification. Subjects are no longer to be regarded as commodities transferable at the will of the sovereign. The people of a country are considered as essential elements in its government, without whose concurrence no change can take place. Whatever may have been the practice or the rule heretofore, it is not compatible with our modern civilisation that a community should be handed over against its will to an alien government. An apt illustration may be found in the relations between America and England. If, unfortunately, a war should break out between the two countries, and Canada should be over-run by the Republican armies, it should not be permissible, against the will of the people of the Dominion, to annex it to the United States. Such, we know, is not a doctrine of International Law now, but it should be made so. The idea is not new. It was a condition of the transfer of Savoy and Nice from Italy to France, that it should be sanctioned by a *plébiscite*. In the process of absorption by which Italy became a great and united kingdom, the assent of the inhabitants of each of the disunited fragments was manifested either by formal vote, or by popular acclamation. Tuscany, Modena, Parma, and the larger part of the Roman States came into the Kingdom of Italy by vote of the people; Lombardy, Naples and Sicily, by a popular uprising. Apart from the

authority of these precedents, the process is demanded by the highest considerations of justice and policy. Popular governments are now the rule in the world; Autocracies are the exceptions; Russia, Turkey, and China are those only which remain. So long as the Monarch was everything, and the people nothing, it was natural that the former should dispose of the latter according to his own will, keeping them to himself or transferring them to another as he saw fit. Now that the reason of the rule has ceased, the rule itself should cease also. The tide of human progress has set for a long time in one direction, and it is now near high tide. Time was when death was the doom of the captive in war; in the course of generations death was commuted to slavery; exemptions from the lot of captivity have followed by degrees, one after another, till the time has come when political slavery, as the result of battles, should follow personal slavery, and both stand condemned. It would indeed be a strange contradiction, the scorn alike of gods and men, to forbid a conqueror to enslave a single person, but yet permit him to enslave a whole people. To allow a victorious army to subject the people of a country to a government which they detest, is to allow the conqueror to reduce a conquered people to a modified slavery.

The suggestion here made looks to the Future only. The Past is past. The present contention is that the civilisation of this age has outgrown the old rule, and that, for the time to come, the participation of the people in every change of their rulers is demanded, not less by abstract justice than by the profoundest policy.

Will it be said that these ameliorations, if adopted, would render war so unprofitable as to do away with it altogether? So much the better. War is an unsafe game at the best. The aggressor is generally a culprit, and History shews that there is a Nemesis which finally overtakes the crime.

It is not necessary to assume that war is always criminal. Resistance to tyrants may be, as it is often said to be, obedience to God. But that war is an evil, is pronounced, by the common consent of mankind. That it is an unmixed evil most men believe. To wage it must therefore be a grievous wrong, except in self-defence. To begin a war is a crime of peculiar atrocity, a crime against the nation assailed, a crime against Society, a crime against Humanity itself. Everything that can be done should be done to make it impossible, and whenever not impossible, yet extremely difficult and unprofitable. They who believe that war is always wrong, they who believe that a defensive war is always right, they who believe that an aggressive war may sometimes be a necessity, all these will assuredly welcome suggestions, having the semblance of reason, for lessening the manifold miseries which any war must bring with it.

DAVID DUDLEY FIELD.

## II.—TENDENCIES OF RECENT AGRICULTURAL LEGISLATION.

**T**HE Statutes relating to Agricultural Tenancies in Great Britain, passed in recent years, afford good examples of the modern tendency to over-legislation. They are evidence also of the effect of a series of untoward events upon the consistency of Politicians and Senators. For claims made from time to time by agriculturists to have alleged grievances redressed by Parliament had been uniformly disallowed by the Leaders of both political parties, who admitted nevertheless, in the fullest manner, the distress that undoubtedly prevailed. They held that it was not politically right, or economically

sound, to interfere with the existing law, which allowed full liberty to tenants to make with their landlords any bargain to which they might be disposed mutually to agree. As seasons, however, continued to be unfavourable, and agricultural losses increased, and fine weather, when it came, was accompanied by larger supplies from abroad, it was not surprising that the cry of the tenant farmers became louder, and the ear of the Legislature somewhat less averted. But even then it was not conceded that bad times justified interference with freedom of contract; it had not been publicly proclaimed that a difficulty in meeting engagements warranted legislation forbidding agreements to contract except upon certain terms, and cancelling in part agreements already made.

The course taken by friends of the tenant farmers was to allege that the land was not sufficiently cultivated, and then to argue that it was for the public interest that it should produce more than existing conditions allowed. It was maintained that benefits that might be derived from the soil were lost because the tenant could not be induced to cultivate his land to its utmost capacity. He could not expect to get back, at the end of his term, the unexhausted value of his outlay, and so left his farm less productive for his successors, and thus less beneficial to the general community. This was a plausible way of submitting an important question to public consideration, and an ingenious method of concealing economic facts. It is not, therefore, surprising that the above view of the question was generally adopted. The general public have very little regard for the principles of Political Economy, or of any other science, when their application produces an apparent hardship; especially when the hardship seems to follow from the exercise of power or the influence of wealth. Another view, however, may well be presented. The tenant farmer, in making his bargain under the old law, was perfectly aware of his



rights and liabilities, and, knowing them, he would, and he did, offer such a rent as would permit of the recovery of such part of his intended outlay as was unexhausted on the determination of his tenancy. If, therefore, he exercised ordinary prudence, he engaged to pay a rent calculated to prevent loss. This providence on the part of the tenant, with its consequent effect upon the landlord, was not perhaps so quickly appreciated by the general community.

If, when there was no express law, and usually no specific contracts, giving compensation for unexhausted value, no injustice was done to the tenant, neither is it to be taken for granted that nevertheless injury was done to the *State*. A tenant might determine to cultivate his land in the best possible manner to the last day of his term, and yet contract to pay a rent that would enable him to be handsomely recouped for all his expenditure. Another might decide to cultivate just short of committing breaches of covenant for good husbandry, impoverishing the land nevertheless, and yet offer no more rent than the man of skill and honourable enterprise. If it be said that the inferior farmer might offer a better rent under his mode of farming, and so push out the worthier, and cause loss of production, it should be remembered that even if the desire for a high rent alone operated in the selection of a tenant, which is not admitted, clearly the payment of a *low* rent would not necessarily imply high farming to the end of a term—and certainly there is no obligation, legal or moral, upon either class of tenant to farm for the good of the public.

But still the public interest having been put in the foreground, and the supposed injustice to the tenant having been accentuated by further falls in prices, it is not surprising that eventually the Government assented to the granting of a Royal Commission. On the Report of that (Rich-

mond) Commission,\* but scarcely on the real effect of the evidence, there were presented to Parliament the Bills for 'England and' Scotland, now known as the Agricultural Holdings Act, 1883, and the Agricultural Holdings (Scotland) Act, 1883.

As the Scotch and English Statutes would not have been heard of but for the fact that principles of the first importance had been overthrown in dealing with the same subject in Ireland, it becomes necessary to enquire whether the peculiar circumstances of that country justified the original Statute of 1870 ; and, next, supposing that they did, whether this fact in any way warranted the application of so revolutionary a measure to England and Scotland.

It must be conceded that the position of the Irish tenant was in some respects different from that of the cultivator on this side of the Channel. Landlords with large possessions were frequently Englishmen of rank or fortune, necessarily absent from the country, who at times ignored some of their higher duties, and who collected by deputies rents contracted to be paid by men possessed of an almost insane passion for the use of land. Others were native owners who also preferred to live abroad ; whilst some, in a larger proportion than in England, were so situated financially that *their* precise abode was a matter of little concern either to the tenants or to anyone else. In all these cases it was probable that the occupier, being left to his own resources, would gradually assume, if undisturbed in his holding, that any permanent improvements upon it must be made by himself, and that a claim thereto, so far as they improved the value of the farm, might well, at the end of his tenancy, be allowed and insisted on. And when the land had remained in the same hands or family for a length

\* To inquire into the depressed condition of the Agricultural Interest, Preliminary Report, Ireland, 1881. Final Report, England, Scotland, and Foreign Countries, 1882.

of years, it would seem that on these or other grounds an interest in the soil itself (involving dual ownership) was considered as engrafted upon the stock of the peasant's rights. It has, in fact, been generally maintained that the Irish Tenant did marvels for the improvement of his holdings; that bogs were reclaimed and buildings erected, and that, so far from being recouped for these outlays, his rent was often raised upon the very improvements made.

The purpose of this Paper being to consider the legislation applied to Great Britain, we cannot now investigate these allegations to the extent that might be desirable. But it should be stated that the preceding picture is not accepted as a correct description of Ireland as a whole by well-informed and trustworthy natives of the country; and there can be no doubt that some of the large landowners have proved not only reasonable landlords, but have expended on their farms sums far in excess of what could have been afforded by the smaller proprietors, either English or Irish. While with regard to the latter (the smaller proprietors), it is positively denied that the expenditure by tenants upon permanent works has ever been at all to the extent or to the value alleged. It is asserted, and cannot be contradicted, that many of the so-called improvements were cabins of wretched character, erected for the use of relatives, not only without permission of the landlord, but against his express orders, and on "farms" little larger than an ordinary English field, and altogether incapable of maintaining the additional population thus imposed. It is, indeed, admitted that the Irish peasant does not encourage the younger members of his family to leave him when of age to act for themselves. In spite of considerable emigration from some parts of Ireland, due probably to the fact that there excessive fertility was to be found rather in the people than in the pastures, it is notorious that grown-up sons will squat on the land and live in hovels rather than

leave the paternal farm to find homes in other holdings, or in a different sphere. Also we have it in evidence that Mr. Gladstone stated that the Irish Land Bill of 1870 was only intended to compel bad landlords to do what good landlords were already doing, and that the latter were in the majority; and yet it is the fact that the Act was no sooner passed than it was found possible to make unreasonable and vexatious demands under it upon landlords who had been remarkable for large expenditure on their tenants' farms and for their beneficent sway generally.

There would seem, therefore, to be grave doubt, at the least, whether sufficient ground existed for legislating even for such a country, in terms of the Irish Land Act of 1870 and its amending Acts, and so dealing rudely with those leading principles of Political Economy under which the high prosperity of the United Kingdom as a whole has been unquestionably promoted.

Turning, however, to the Act of 1870, we find that in tenancies created after the passing of the Act, it gave by Section 3 compensation to the tenant for disturbance in his holding by the landlord; and by Section 4, the tenant who makes no claim under the Ulster custom (as in the former case) can, on quitting his holding, and subject to Section 3, claim compensation to be paid by the landlord in respect of all improvements made by him or his predecessors in title. This is followed by a proviso that in certain specified cases the section shall not apply. Section 4 clearly applies to tenancies existing at the passing of the Act, although the Court in awarding compensation is to consider, in reduction of the amount, any benefits which may have accrued to the tenant. A very moderate provision this, when it is considered that the landlords, immediately after the passing of the Act, had sprung upon them demands for so-called improvements extending over a long series of years, and for which they must have been entirely unpre-

pared. The only relief afforded being a power to obtain the funds for payment of the compensation from certain Commissioners, and to charge estates already perhaps too heavily burdened. This difficulty was afterwards increased by the Act of 1881, which enabled the tenants in Ireland to reduce the rent reserved to the landlord to a "fair rent," after a contest in Court, with its attendant delay, worry and expense.

It is no doubt the case that the Act of 1870 was, in respect of compensation to the outgoing tenant, founded on the Ulster custom of Tenant right, which custom the Act declares legal wherever it happened to prevail. But the origin of the custom was very lightly touched upon by the distinguished Minister who introduced the measure to Parliament, and thus he did not shew how, under a state of things existing centuries back, certain rights were conferred for certain liabilities incurred or imposed; or how such rights of a Customary character as grew therefrom might very well receive the support of the law, without their being forcibly applied at a later period to all the tenancies of the island. It is known that the Ulster custom, or a near equivalent, prevailed in other parts of Ireland besides Ulster, and if this extension of the custom resulted from natural causes, one may well enquire why it should not have been allowed to develop according to mutual convenience, instead of being suddenly imposed upon the whole people, regardless of persons, places, or circumstances. That customs continue to arise from time to time is obvious, and in the very Report in question the growth of a *new* custom favourable to the tenant is alluded to.

If it be said that the Report of the Richmond Commission in effect justifies compulsory legislation by the allegation that the improvements and equipment of a farm in Ireland are very generally the work of the tenant, we

refer to our previous notice of this statement when made by others, and also to the Report of the Bessborough Commission\* in order that it may be remembered that it was "the rule rather than the exception *not* to exact in Ireland what in England would have been a fair commercial rent."

It is contended therefore that, even in the peculiar case of Ireland, it was not sufficiently established that the novel and disturbing Act of 1870 was required by the circumstances of the country. And inasmuch as that Act was quickly amended and supplemented by other Acts, and further Government Bills were proposed which did not develop into Acts, and now, as we write, another statute is passed overthrowing contracts made on the faith of the former statutes, and repealing or amending provisions of all of them, it would seem that we have therein abundant evidence of the mischief of Government interference in matters of contract between capable parties, and also of the mistake of supposing that every difficulty or misfortune can be cured by legislation.

The Irish Acts having thus been passed, and the Richmond Commission having reported in 1881, the way was paved for satisfying the demands of the English and Scotch tenants. But we recommend such persons as may read the Report to examine the evidence also. They will see how unlike are the conditions of Irish and British farmers, and how, nevertheless, some witnesses insist that legislation intended for the former only, may fairly and properly be applied to the people of Great Britain. In Ireland, so the Commission report, the small holdings are a positive evil, the tenants cannot live on the produce of their farms, and the Act of 1870 itself is spoken of as having led to certain "abuses" by reason of the excessive competition for land. These abuses are set forth—1. Unreasonable

\* Inquiry into the working of the Landlord and Tenant (Ireland) Act, 1870, and the Acts amending the same. Report, Jan. 4, 1881.

“payment for tenant rights; 2. Arbitrary increase of rents; 3. Overcrowding of the population in certain districts; 4. Minute sub-division of land. Thus the Act of 1870, a remedial Act, is here declared to have produced a mass of evils, and we note that three out of the four evils specified arise from the acts of the tenants themselves.

In England and Scotland, as we are all aware, the conditions are very different. We know that in England and Scotland the tenants do not, as a rule, erect permanent buildings, or execute other permanent works on their farms at their own cost. We know that the buildings are usually erected by the landlords; that drainage (a terminating benefit) is usually effected under a joint arrangement; that the proprietors have not quite the same character for absenteeism, or for the alleged exaction of heavy rents; that they have not around them a population ready to offer either foolish rents, or to outgoing tenants absurd values for tenant right. Nor are there the disturbing elements of a political character to interfere with the real freedom of the individual. Even the extreme members of the Commission of 1881, while advocating for Ireland yet further legislation than is recommended in the Report, rest their demand on “the special conditions of the case with the moral and equitable relations of landlord and tenant there, *so unlike those which prevail in England.*” If unlike England, then how unlike Scotland, where, under the nineteen years’ lease system, many a wilderness has been turned into a garden, where rents have been thereby doubled and trebled, such rents being paid without a murmur, nay, even competed for, and where, nevertheless, the tenants have become rich, the landlords satisfied, and the public contented. But in Ireland not so. For, while in England and Scotland, says Mr. Gladstone, the idea of holding land by contract is perfectly familiar to the mind of every man, in Ireland, on the contrary, where old ideas and customs were supplanted

by violence, "the people have not generally embraced the idea of the occupation of land by contract, and the old Irish notion that some interest in the soil adheres to the tenant, even although his contract has expired, is everywhere rooted in the public mind."

In 1875 the Conservative Government passed an Agricultural Holdings Act for England, and although only of a permissive character, this Act was followed, as might have been foreseen, by compulsory Acts; for the Liberal Party, in 1883, carried the Agricultural Holdings Acts for England and Scotland (46 & 47 Vic., cc. 61 & 62). And as the Irish Act of 1870 was amended and enlarged by subsequent Statutes, so we may confidently believe that the English and Scotch Acts will be treated in a similar manner, several notices of Bills to do "complete justice" having been already given. Thus economic principles are set aside, paternal legislation is introduced, and the effect is to cause dissatisfaction to both landlord and tenant; but with the further result in the case of the tenant, that he now proclaims that the propriety of interference in his favour has been conceded, his dissatisfaction being only that the interference has not been carried far enough. In the Bills lately proposed we see freely developed the extreme provisions of the Irish Acts, if not the views and plans denounced by Mr. Gladstone when introducing the Irish Land Act of 1881: "I do not wish," he says, "to attribute to the proposers of those schemes a consciousness of their character and tendency, such as I consider them to be. But speaking of many of those plans, quite apart from the motives and views of those who propose them, I am bound to say that it passes my ability to distinguish them from public plunder." Is it too much to say that the example of Ireland has stimulated some of the farmers of England and Scotland to represent their landlords as counterparts of those in the sister country, and that, by



persistent cries of hard usage and hard times, they have at last prevailed upon the Government of the day to apply to this country legislation originally intended for a different people under entirely different circumstances? And yet in the same speech we are told that even in Ireland the general application of the Act worked injustice. "It may seem hard where there are so many landlords with whom we have not a shred of title to interfere, were it possible to sever their case from other cases around them, that they must be liable to interference on account of the acts or omissions of the few; but so it is, and so it must be, under the iron necessity of public affairs."

Then what are the objects aimed at by the Acts for England and Scotland? It is significant, perhaps, that they do not by any preamble suggest any injustice to correct; indeed, there is no preamble at all, and "Be it enacted" are the only words introducing measures of such vast importance. In substance, however, they carry out the principle of the Irish Act of 1870 as to compensation for improvements, and they modify the severity of the landlord's remedies of distress and hypothec respectively. In regard to the latter provisions, it is not denied that there was room for improvement; and if the Law in former times gave a remedy for breach of contract, admitted now to be too stringent, it is well within the competency, and it is the duty of the Legislature, to amend or modify the same. But the contention is that, as regards the bargaining for the use of land, Parliament has improperly interfered between parties perfectly well able to contract on reasonable terms; and while we know that, according to seasons and circumstances, the advantage will be sometimes on one side and sometimes on the other, the statutes in question ignore these considerations and give mischievous force to the popular assumption that, as between landlord and tenant, of freedom of contract there can be none.

This charge of 'want of freedom' is usually made in reference to the position in an agricultural holding of the sitting tenant, for indeed it can scarcely, in the wildest view of the question, be held to refer to a stranger coming to offer a rent for the first time. It is said that a sitting tenant must either pay a rent, assumed for the present purpose to be excessive, or leave the farm, and he cannot without loss leave his farm because a portion of his expenditure for improvements has not been returned to him. But surely the answer is that the tenant knew from the first that his expenditure could not be returned within the year, if he held under a yearly tenancy; and that as his rent was fixed on the footing of no compensation, it is not in accordance with the facts for him to say that he has suffered a "loss." It was open to him, if he contemplated improvements of longer duration, to insist upon a *lease* of such duration, and on such terms as would allow of profitable repayment. If his terms were refused, it was for him to retire, and leave the landlord to find, where he could, tenants to his mind. One of the principal witnesses before the Richmond Commission was Mr. Barclay, M.P., and his advanced views are well known, yet he felt constrained to say as follows: "I have thought it over a good many years, and I do not see any practical method of giving compensation that will not permit of very great injustice at one time to the landlord, and at another to the tenant." He then states that his remedy would be fixity of tenure, based on a new rent to be arranged in some manner between landlord and tenant. In the course of that gentleman's evidence he is asked, "Supposing that a man who takes a farm for 19 years has been repaid every expenditure he has made upon it, and has had a handsome profit, and has been able to pay a good rent, what possible title has that man to compensation for the increased fertility of the farm when he leaves it; how is it his own in

any way?" Mr. Barclay replies by asking if it is assumed that the fertility can be measured by a certain sum, and he is told "No," and that the starting point is only that a man wants to carry on an agricultural business for profit, and the question as above is repeated. Mr. Barclay, after another enquiry whether Law or Equity is intended, answers that "in Equity the tenant is clearly entitled to a certain portion of the improved value which has been due to his exertions." Afterwards he justifies this answer by saying that he starts "with the Fundamental principle that no man is entitled to anything unless he labours for it." Asked if the 19 years' system is not very different from *year to year*, and whether Irish tenants do not complain of liability to have their rents raised at the caprice of the landlord at any time, he replies, "theoretically the Scotch tenant, having a 19 years' lease, has legal possession for 19 years as compared with one year. The tenure in Ireland is nominally from year to year, and the landlord has the power theoretically to turn the tenant out at the end of the year; but that power is tempered by what I might venture to call *the fear of assassination*." (!) Again, "Do you think that in those cases where the tenant is subject to the caprice of the landlord, the Irish tenant is in a better or worse position than the Scotch tenant who holds for 19 years, and can defy his landlord for that period?" Reply: "That is so theoretically; but practically the Irish tenants have no fear of eviction or of the raising of rents from year to year." Chairman: "The evidence before us is of a totally different character." Yet this is a witness to whose evidence much importance was attached, he is himself a legislator, and will, no doubt, as soon as opportunity serves, do his best to promote views of such mischievous extravagance. A distinguished member of the Richmond Commission, referring in his separate Report to the proposed control of rent by the

State says, "It is a direct violation of the fundamental principle of all soundly constituted industry,—Freedom of contract,—and soundly constituted industry is the root of National prosperity. The State might as well dictate what the price of corn, or coal, or cloth shall be. Such a valuation of rent in England would be held to be an unjustifiable meddling of the State with private business." Then behold the prophetic words! "Who can set a limit if the State is to decide what is to be the price of borrowing a piece of land? In Ireland a demand for the *complete extinction of rent* would soon be looming in the distance."

Then what are the matters in respect of which compensation is given to the farmers of Great Britain by the legislation of 1883? Provision is made for compensation for the unexhausted value of any "improvements," on the tenant quitting his holding at the determination of his tenancy, and the improvements are specified in a Schedule under three heads; the amount payable for compensation being "such sum as fairly represents the value of the improvement to an incoming tenant." The items in the Schedule may be classified as consisting of (1) Buildings and other permanent works, (2) Drainage, and (3) Manures. As in regard to the first no compensation can be given unless the landlord has consented to the execution of the works, little more need be said. But in the matter of *Drainage* the tenant may, after notice to the landlord, and on his refusal to join in the drainage scheme proposed, execute the work himself and claim compensation as above. It would seem that the landlord's honest opinion that the drainage was unnecessary would not avail if the tenant rightly, or even wrongly, thought otherwise, and that the works could be executed; the result being that the tenant would risk a claim as for an "improvement," and the landlord perhaps counterclaim for deterioration committed. The third head in the Schedule covers a variety of matters,

since it includes boning, claying, liming, and marling of land, application of purchased artificial manures, and consumption on the holding by cattle, sheep, or pigs, of cake or other feeding stuffs not produced on the holding. Not only is this clause compulsory on the landlord, but it is made applicable to existing leases, for, where any such improvements have been effected within ten years before the passing of the Act (there being no obligation imposed on the tenant, or custom operating, in respect of them), the tenant may, at the proper time, claim compensation as if the Act had been in force at the time of the execution of such improvements.

To guard the landlord against unreasonable claims, we have the clause in Section 1., as to the value of the improvement to the in-coming tenant. But to consider the worth of this safeguard we must remember that, as the supposed value will always be estimated in part by the outlay, the power of the *Landlord* to give to the arbitrator, in case of dispute, evidence of the circumstances under which the outlay was made, the mode of application of manures, the state of the weather at the time, &c., must be very limited. Yet the deciding mind must proceed on evidence, and can anyone believe that the tenant will represent his agricultural operations as having been otherwise than sound and business-like?

This brings us to the machinery by which the compensation payable to the landlord for deterioration or other claim, and to the tenant for improvements, is to be estimated. The Acts provide that in the event of the parties not being able to agree as to the amount of compensation to be paid to either party, "the difference *shall* be settled by a reference;" and, thereupon, a referee, or two referees, and an umpire, shall be chosen with the formalities therein numerously specified. It is open, however, to the parties (Section 5), in the case of a tenancy beginning

after the commencement of the Acts, to enter into any "particular agreement, in writing," securing to the tenant, for any improvement mentioned in the third part of the Schedule, "fair and reasonable compensation;" and in that case the compensation is payable under the agreement, and in substitution for compensation under the Act. As, by Section 36, an agreement by which a tenant deprives himself of his *right* to compensation is void, it is satisfactory that parties can enter into arrangements by which the mode of arriving at the amount is fixed previous to the dispute arising. But still the difficulty remains that an enquiry has to be made at the determination of the tenancy, and thus third parties must almost necessarily intervene. It does not seem possible to satisfy this Section by agreeing to treat as "fair and reasonable compensation" for unexhausted value a large deduction, from the beginning of a lease, in the amount of *rent*, thus leaving both parties free from keeping long accounts, from vexatious examinations, and prolonged enquiries. And to settle the amount due according to any other mode, all these duties are inevitable. For instance, the "particular agreement" may provide that lime applied to a farm by the tenant shall be taken to operate beneficially for ten years, and that the rate of diminution in value to the land shall be on a certain scale. It will still be necessary to have accurate accounts of the lime actually used, its quality, quantity, and time of application. On all these essential points either the tenant's word must be accepted, or the agreement must provide for notice to the landlord of the days when the lime is to be applied, so that he may set a watch on everything, and so it would be with the cake and other feeding stuffs supplied to cattle and sheep. It is, of course, possible that after all these precautions the parties can be found to agree as to the amount really due, but a *difference* followed by arbitration under the Act, is much more probable, with, perhaps, the further

result of litigation upon the award at suit of the party disappointed.

Then with regard to the referees, it may be argued that as the referees are usually tenant farmers, they are as capable as any authority that could be selected for appreciating the evidence of a brother farmer and of judging of the value of the unexhausted benefits in the soil. But first, the proof of acts done years before the enquiry must almost entirely depend on oral evidence, and that really means on the statements of the tenant alone, and in regard to some of these, positive evidence to the contrary is scarcely possible. Secondly, the value of manures still lying in the bosom of the soil at any particular date has been declared by very competent authorities to be practically incapable of estimation. This has been virtually admitted, except, perhaps, as to one article, by the farmers themselves; and their Associations have consequently prepared scales for ascertaining the diminishing value of manures applied to land over a course of years. As it is not pretended that those scales are anything more than a rough device to get over a difficulty, it follows that occasional injustice must ensue either to tenant or landlord; and this because it has pleased the Legislature to enact that a benefit was to be given to the tenant when there was no certain method known how that benefit was to be measured. Thirdly, the class interest cannot be altogether ignored, for, unquestionably, the natural bias must be in favour of the cultivator and the supposed weaker party. This *à priori* consideration is well supported by facts of a remarkable character within the writer's knowledge. Again, something like positive connivance at fraud would seem to be implied in the following case, unless, indeed, the referees were simply ignorant. In the matter of artificial manures, it is well known that nitrate of soda is an active stimulant for the current crop, but is rather injurious than otherwise to the

land itself. On the authority of a Government Inspector it can be stated that claims have been made for the "unexhausted value" of nitrate of soda when the tenant has had the whole of the benefits from its use and has admitted, (in private) the consequent injury to the soil. Such claims have been made and allowed. But even when the umpire is a man of intelligence and honour we all know that disasters will at times overtake the arbitration. In a recent Scotch case, the tenant claimed for unexhausted value of imported manures and feeding stuffs £1,200; this, at the end of a lease entered into years before the Agricultural Holdings (Scotland) Act was thought of, and at a rent therefore fixed upon the footing of no compensation. On arbitration held, the landlord's arbiter found that a little over £100 was probably due, the tenant's representative fixing the value at £900. On reference to the oversman to decide, the award was for £280. But it having been declared that this amount was partly made up of a sum "for the good cultivation of the farm generally," the landlord appealed to the Sheriff, who decided that in so acting the oversman had erred. The award was then remitted to him with instructions to confine himself within the limits defined by the Statute, and to award again.\*

\* Practical farmers are now declaring that arbitrations are not so completely satisfactory to them as they would wish, and undoubtedly the risks of failure are great, the enquiries extensive, and the expense not trifling. In a recent case in the north where two arbiters, one oversman, and a legal assessor, or clerk of the reference, were engaged, the tenant's statement of sums expended for lime, manure, and feeding stuffs on a farm of 373 acres was £5,649, and the unexhausted value claimed £500. The arbiters in making their calculation had, for meal and cakes alone, 16 columns for figures as to 178 acres only. Here are some of the heads: Fields, acres, weight, rate per acre (weight), amount per field (weight), rate per ton, manurial value, total manurial value for meals and cakes, rate per acre (money), manurial value of field, year, crop, rate (of exhaustion), value exhausted, value unexhausted, result for each year. There were of course solicitors, also an advocate, skilled witnesses, &c. The tenant was allowed £322, expenses £116 (to be divided equally).



We are aware that in some counties in England the practice of giving compensation of the character in question more or less prevails as a local custom, the transaction being usually effected as between the outgoing and the incoming tenant ; and it is also the case that some form of arbitration is then found necessary. It is therefore argued that the Act of 1883 only extends generally the custom actually in existence in an important agricultural county—Lincolnshire—and that a good custom there cannot be an evil one elsewhere. But we venture to think that this is no justification at all for a compulsory measure, and as we find that in Lincolnshire it is not the rule to grant *leases* (a very important consideration), it seems only reasonable that a custom should arise in favour of tenants who are willing to engage in high farming under such otherwise hazardous circumstances. Moreover, it would seem that the custom in question is of comparatively recent growth, and if such customs can come into being and spread over the country by their own force, modified as the special circumstances require, we fail to see the wisdom of applying hard and fast rules of compensation to the whole country, regardless of local necessities, against the wishes of the parties, and in restraint of commercial freedom.

It may now be asked whether there is not an evil to correct? We apprehend that the question ought rather to be whether there is an evil for correction by Parliament, and we think the answer should be in the negative. Further, even if it were otherwise desirable to obtain legislative control over agricultural covenants in contracts between landlord and tenant, the experience derived from past legislation in England and Ireland shews that every attempt to remedy alleged evils has been the parent of fresh difficulties, leading to renewed action in Parliament, and yet again resulting in disappointment and dissatisfaction. Even as we write, a fresh measure for Ireland is

unfolded, much to the dismay of those who relied upon the contracts entered into for a fixed number of years on the express authority of Parliament. The Land Law (Ireland) Act, 1887 (50 & 51 Vict., c. 33), varies or affects provisions of the Acts of 1870, 1872, 1881, and 1885, and by Section 29 provides that the Land Commission, having regard to the difference in prices affecting agriculture, between 1881 and 1887, shall, without application, determine what alteration, if any, ought equitably to be made in the Judicial rents to become payable in the counties or districts where these enquiries are instituted. Thus we have first a rent agreed on between parties set aside, next a new rent fixed by local authority, and intended to bind both parties for fifteen years, next that new rent cancelled at the end of five years or less, and a fresh rent imposed, but for how long or under what conditions we have not yet ascertained.

It must not be supposed, however, that English and Scotch tenants universally admit the propriety of the Legislature making bargains on their behalf. Not a few have been heard, even in Chambers of Agriculture, protesting against the interference, and others have loudly complained of its mischievous results. What will these men say when the British Amending Acts have reached the number, and acquired the quality, of the Irish Acts?

Then we have in Great Britain, besides the Acts of 1883, other measures of kindred character. The original *Crofters' Act* of 1886 deals with a very special state of things, and cannot be discussed here without an extensive survey of the history of crofters' holdings, but it is certain that the Act in question was passed with the assistance of many who are now in no small degree ashamed of having sacrificed to popular outcry, or party allegiance, undoubted rights of their fellow citizens. And yet, as in Ireland, this invasion of rights is held insufficient, for we now have

the Crofters' Act of 1887, and also a promise of further legislation in 1888.

Another Statute is the *Allotments and Cottage Gardens Compensation for Crops Act*, 1887, and seeing that an "allotment" implies no more than two acres of land, this Act does indeed indicate a descent of the great Legislative machine to the control or management of very small things. Upon the determination of a tenancy of this character, the tenant shall be entitled, notwithstanding any agreement to the contrary, to obtain from the landlord compensation in money for crops and fruits growing upon the holding, for labour, for manure, and, conditionally, for certain other matters. Here also, arbitration, appeals, costs and expenses, though reduced to a minimum, have their place; and in this, as in the other cases, dissatisfaction is already expressed, one complaint being that the Act is not to operate in certain places.

If, however, legislative interference is to be rejected, is the tenant either to abstain from cultivating his farm to its utmost capacity, or is he to disclaim all compensation? We do not think that the choice is so limited. The tenants are now masters of the situation, and it is for them to insist on bargains which shall admit of justice to the soil and to themselves. If they intend to apply costly manure to the land at the near determination of their tenancy, or else not to farm at all, it is for them to bargain so as to recover approximately the proportion of value fairly due to them, as by a modified rent,\* fixed from the beginning of the term, or, as in some counties, by fixed payments

\* In his able paper on Land Tenure in England and Scotland (*Law Quarterly Review*. Stevens & Sons. 1885. Vol. I., p. 410), Mr. Robert Campbell refers to a practice in vogue in the 14th century. "Early tenancies were sometimes by way of an improving lease, as when the monks of Arbroath let certain lands to joint tenants for five years for a yearly rent of 40s., and subject to the obligation to build during the year a barn and a byre." The authority for this is the *Registrum de Aberbrothoc*, No. 352, p. 309. Reading further on, we see a

from the landlord at the end of the tenancy. As we have said, the tenant, on whatever terms he holds, cannot be compelled to farm for the public advantage, but we incline to the opinion that by reasonable agreements that result would in effect be obtained.\* It is not within the scope of this Paper to specify the terms to which landlord and tenant should agree; but if a suggestion may be made in a sentence, and with all diffidence, we would urge that, in the case of adequate holdings, tenants should insist on leases of 19 or 21 years; and, as bad seasons of extended duration will at times prevail, breaks in the leases at stated periods should be allowed, and these at the option of the tenant only. If this or any other reasonable course, advantageous to the tenant, were agreed to, it does not necessarily follow that in prosperous times the landlords would revert to their former terms. The general tendency is too much the other way. The liberty of the tenant is always extending and cannot be contracted.

Reviewing, therefore, the various attempts to legislate usefully in respect of this subject, we hold that in all these cases respectively a much better case for interference should have been made out before the overthrowing of conspicuous pillars of Political Economy, from whose support the United Kingdom has derived so great strength and such undoubted prosperity as a commercial nation. And we seem to be reverting to barbarous times, when we seek to bind the hands of traders of our own country in settling their own affairs on their own soil. If the measures in

covenant not unknown to modern Leases— "*Quas quidem domos ad finem termini sui in bono statu infra dictam terram dimittent constructas.*"

[An improving lease of the lands of Balgarvy, in Perthshire, is cited from the *Chartulary of Scone*, sub anno 1312, in an interesting paper by G. Burnett, LL.D., Lyon King of Arms, in the *Scottish Review* (Paisley and London, A. Gardner), for Jan., 1888, where Lyon points out that this lease was for 30 years, in violation of a Canon of a Scottish Provincial Council of 1242, which made 5 years the maximum for leases of church lands to laymen.—ED.]

question are not entirely in the direction of universal State control, they are at least steps towards diminishing the real independence of the citizen. We must remember that in the grant of an immediate advantage the inevitable consequence is not always foreseen, while the logical result can neither be hindered nor denied.

We conclude in the words of Professor Bonamy Price (sadly lost to us while this Article was at press), one of the members of the Richmond Commission,—words to be found in his separate Report, but, unfortunately, not accepted by the majority of the members, and ignored also by the Government and by Parliament:—"For nations as for individuals there is one golden rule which ought never to be violated—not to start from false principles, however trifling their action may seem to be at first. The law of human nature decrees and enforces that their evil nature shall do its work and develop the mischievous consequences which they contain."

H. RUTHERFURD.

### III.—FOREIGN MARITIME LAWS: II. ITALY.

#### MERCANTILE MARINE CODE. PT. I. TIT. II.

#### CHAPTER VI.

#### *Of Ship's Officers and Crews.*

ART. 66. In the composition of the ship's crews the following are considered as ship's officers, subordinate to the Captain:—

- (1.) The second captain (chief officer).
- (2.) The mate [*scrivano*].
- (3.) The second mate [*sotto scrivano*].
- (4.) The ship's doctor.
- (5.) The first engineer, in steamships.
- (6.) The second engineer.

The following are considered petty officers, subordinate to the captain and ship's officers :—

- (1.) The boatswain or boatswains (mates), who superintend the rigging, and look after the fittings of the ship. •
- (2.) The local pilot,\* for the whole time that he has charge of the ship's course.
- (3.) The carpenter, so far as concerns the results of an abandonment of the ship.

67. The following conditions are necessary to qualify for mate :—

- (a.) To have completed 20 years of age.
- (b.) To have been 30 months at sea, of which one-half must have been in national (Italian) vessels.
- (c.) To have passed a technical examination in accordance with the established regulations.
- (d.) Not to have been sentenced to a criminal punishment<sup>(\*)</sup> for any offence, or even to a correctional punishment<sup>(a)</sup> for theft, cheating, embezzlement or fraud, receiving or assisting the sale of stolen goods, or of an offence against public order, unless subsequently pardoned.

Certificates of competency to sail as mate are given by the Captain of the Port of the Department to which the applicant belongs.

In England, a mate must be 19 years of age and have served at sea or five years, of which one must have been as second or only mate. An intermediate grade of "only mate" is recognised between that of "mate" and "second mate," the qualification for which is five years at sea without previous service as second mate; in both cases there is a technical examination, that for "only

\* From this and Art. 107, *post*, it would appear that the English law of Compulsory Pilotage cannot exist in Italy, but that the position of a pilot there is similar to the position of a pilot in the Suez Canal. (*The Guy Mannering*, 7 P.D. 132), in France (*The Augusta*, 6 Asp. M.L.C. 58), and in the Danube (*The Agnes Otto*, 12 P.D. 56); but see also Tit. III., Ch. V., *post*.

mate" being intermediate in difficulty between those for "mate" and "second mate."

(\*) These offences nearly correspond to "felony" and "misdemeanour" respectively.

68. The following conditions are necessary to qualify as second mate :—

- (a.) To have completed 18 years of age.
- (b.) To have been at sea for two years.
- (c.) To know how to read and write correctly, and to possess an elementary knowledge of navigation, according to the programme of examination established by regulation.
- (d.) Not to have been sentenced to criminal punishment(\*) for any offence, or even to a correctional punishment<sup>(\*)</sup> for theft, cheating, embezzlement or fraud, receiving or assisting in the sale of stolen goods, or for an offence against public order, unless subsequently pardoned.

The regulations of the preceding article for the issue of certificates as mate, apply also to certificates as second mate.

In England, a second mate must be 17 years of age, and four years at sea, and must pass an examination.

(\*) See note (\*\*) to previous Article, *suprà*.

69. The conditions under which the employment of an engineer, whether as first or second, may be exercised, are determined by the regulations, and the certificates relating thereto are given by the Minister of Marine. Steamships which are used for voyages along the Continental and Insular Coasts of the Kingdom, the Mediterranean Coast of France, the Islands of Corsica, Malta, and Corfù, the Coast of Tunis, and the Dalmatian and Istrian Coasts, must carry at least one second-class engineer, if the total power of the engine is less than 100 horse power nominal, and a first-class engineer, if the engine is of more power.

Steamships intended for voyages beyond the limits above mentioned must carry at least one second-class engineer, if the engine is less than 100 horse power nominal, as above stated, and two engineers, one of the first, and the other of the second class, if the engine is of greater power.

In England there are two classes of engineers, 1st and 2nd, and every Foreign-going steamship, *i.e.*, steamer trading to ports beyond Brest and the Elbe, and every sea-going Home Trade Passenger steamship must have one second-class engineer, and, in the case of Foreign-going steamships of 100 H.P. nominal, one 1st and one 2nd class engineer, at least : Mer. Ship. Act Amt. Act, 1862, § 5.

70. Vessels of more than 100 tons burthen, and steam-vessels used for passenger traffic along the coasts of the Kingdom must, besides the captain or master, carry a mate, who has at least the certificate of a second mate. Ships which undertake extended coasting voyages,\* and steam-vessels used for passenger traffic in the Mediterranean, but beyond the coasts of the Kingdom, must, besides the captain, carry a mate, who has at least a chief mate's certificate, and a third officer, who has at least that of a second mate.

Vessels which undertake ocean voyages, and steam-vessels used for passenger traffic beyond the Mediterranean, must, besides the captain, carry a mate, who has a captain's certificate, and a third officer, who has at least a second mate's certificate.

In England, a Foreign-going ship, *i.e.*, a ship trading to places more distant than Brest and the Elbe, or Home Trade Passenger ship, must have a certificated master, and if over 100 tons burthen, a certificated mate. Home Trade vessels not carrying passengers need have no certificated officers : see Mer. Ship. Act, 1854, § 136.

71. The minimum number of crew for each class of vessel must be in accordance with the regulations.

\* *Gran cabotaggio* : for the limits of such voyages, see Art. 59.



In fitting out a ship, the captain or skipper, and at least two-thirds of the crew must be natives (Italians).\*

But Consular officials in foreign ports may, in accordance with the necessities of the case, permit foreign seamen to be shipped in excess of the proportion prescribed.

It is not permissible to have recourse to foreigners for captain or skipper, and mate, unless it becomes necessary from the impossibility of procuring natives (Italians).

72. No native (Italian) can be allowed to become a member of a ship's crew in the Mercantile Marine, unless he is entered on the list of seafaring persons† or register of seamen.†

In England there is no provision corresponding to this, but a recent Statute (43 & 44 Vict., c. 16, § 7), requires four years' service at sea for the rating of A.B.

73. The shipping articles entered into between the captain, skipper, or ship's husband and the members of the crew, must be in writing, under pain of nullity, and be signed by each person shipped.

If a person shipped cannot write, the Port officer must note the fact on the shipping articles, and have it witnessed by two independent persons who are not members of the crew.

Minors who have completed 18 years of age are, for the purpose of shipping articles, deemed to be of age, and can sign without the intervention of parents or guardians.

Minors of less than 18 years of age ought to be shipped by their respective parents or guardians, either by their personal intervention in (signing) the shipping articles, or

\* A regulation akin to this exists in almost all civilised States except Great Britain, which country, since 1853, has allowed her ships to be entirely manned and officered by foreigners, an arrangement no doubt "cheap" in time of peace, but likely to be found "nasty" in time of war: see 12 & 13 Vict., c. 29, §§ 7, 8; 16 & 17 Vict., c. 136, § 31; 17 & 18 Vict., c. 120.

† *Matricola, registro della gente di Mare*: see Arts. 18—22.

by means of an authorisation lodged in the Port Office, which must be either a deed attested by a notary, or a free pass from the Syndic of the Commune.

The engagement of the youths mentioned in Art. 262 \* of the Civil Code must be made with the consent of the managers of the refuge shown in the manner established by the Regulations.

For the corresponding regulation in Great Britain, see M.S.A., 1854, §§ 143, 144, 149—152; Mer. Ship. Act, 1873, § 7; Mer. Ship. (Fishing Boats) Act, 1883, §§ 4—12.

74. The members of the crew, whilst subject to the (maritime) levy, cannot be discharged in a foreign country, even if the engagement is terminated, nor yet by consent of the parties.

75. If a member of the crew of a national (Italian) vessel be discharged or left behind in a foreign country, or in a home port [*porto dello Stato*] different from that in which he shipped, unless at the same time he was shipped on board another vessel, the expenses of sending him home are laid—

(a.) To the charge of the ship, and paid by the captain or skipper to the Consular Officer or Maritime authority, with the document of discharge, in all cases in which the person who is landed has been discharged by the ship's husband, captain or skipper, for any reason which is not the result of the act or will of the person engaged :

(b.) To the charge of the ship's husband, when the discharge is the consequence of wreck, or other insuperable obstacle, and is paid out of the proceeds of the salvage, if any, of the ship and her apparel, and of the freight of goods which are salvaged :

(c.) To the charge of the person discharged, if the discharge is the consequence of sickness or injury,

\* See *Post*.

the cure of which is by law chargeable to the person engaged.

Captains, skippers and ship's husbands, *except* in case of discharge for a crime, are liable to the State for expenses incurred in sending a member of the crew home, saving their claim over against the person, if valid.

See *Code of Commerce*, Arts. 535—538, *Ante*.

For somewhat similar regulations in British ships, see Mer. Ship. Act, 1854, §§ 205, 207.

76. The *viaticum*, in accordance with the preceding article, unless agreed upon between the captain or skipper and the person who is discharged, is settled by regulations.

In all other cases the arrangements for seamen returning home are made by the Consular officials or Maritime authority. The payment and repayment of the expenses incurred takes place in the manner laid down in the regulations.

Cf. Mer. Ship. Act, 1854, § 205.

## CHAPTER VII.

### *Of the Survey of Ships and of their Departure.*

77. Every vessel which undertakes a voyage must be in a seaworthy condition, and be furnished with the apparel, rigging and instruments which are prescribed by regulations.

Passenger steamers, and vessels both sailing and steam, which undertake ocean voyages and coasting voyages beyond the limits of the Mediterranean, with the exception of those referred to in Articles 61 and 149, cannot sail unless their seaworthiness is verified by the Maritime authorities, if within the Realm, or by the Consular authorities, if abroad, by means of a special visit and survey, made at the expense of the owner or ship's husband, at least once annually, if the vessel is built of wood or of

wood and iron combined, and biennially, if the vessel is built of iron.

In Great Britain all vessels required to be registered must be officially surveyed before registration, M.S.A., 1854, § 36: Passenger, *i.e.*, emigrant ships, before going to sea, Pass. Act, 1855, § 19; Mer. Ship. Act, 1872, §§ 5, 13; and Passenger steamships every year at least, Mer. Ship. Act, 1872, § 8.

78. The survey will be held by Government Inspectors, or by experts named by the said authority, who will ascertain, according to rules, and by all skilled methods, whether the vessel is fit for sea, and will determine what voyages she may make, and the time at which she must be again surveyed, whenever this ought to be done before the annual or biennial survey mentioned in the preceding article.

The Minister of Marine may allow the visit and survey of a vessel made on her registration, under special arrangements, if considered as equivalent, instead of an official visit and survey, so far as concerns the duties of his department.

79. The report of the official survey, or the certificate of registration, shall be presented to the Maritime or Consular authority, and in the form and with the results laid down in the regulations.

80. The vessels to which Art. 77 relates are subject to a fresh survey whensoever, in the course of navigation, they have sustained serious damage.

When a vessel which is about to commence a voyage is near the date at which, in accordance with the preceding Articles 77 and 78, she ought to be surveyed, the Maritime or Consular authority will require the fulfilment of the said form, except when the vessel is bound direct to a port at which the survey can be more conveniently held.

81. The Maritime and Consular authorities may order a special survey whenever those concerned make a complaint, and must order one when the complaint is made by the majority of the crew before the ship is laden. If the result of the survey shews that the complaint of the

majority of the crew was unfounded, those who made (the complaint) will be punished by disciplinary penalties.

The above-named authority, and commanders of vessels of the Royal Navy, can, at any time and place, survey or cause to be surveyed, national ships, to see if they are provided with, and maintain as they are bound to do, the equipments required by the regulations, proceeding to ascertain the deficiency, if there is any.

For a detention of the ship for survey on complaint of the crew, the Board of Trade can in Great Britain require security, and if the complaint is unfounded claim over against the persons making it all costs and damages they may have incurred in consequence of the detention : Mer. Ship. Act, 1876, § 11.

82. Every steam-vessel, in addition to the survey mentioned in Art. 77, is subject to an inspection of her machinery at least once a year, if she is used for the purpose of carrying goods exclusively, and every six months, if used to carry passengers.

The inspection is made at the expense of the owners, and under the direction of the Maritime authority within the Realm, and of the Consular authority abroad.

The Surveyors ascertain—

- (a.) If the boilers, engines and their accessories are in good condition and fit for the voyage on which the ship is bound :
- (b.) The maximum weight which may be placed on the safety valve :
- (c.) The time at which the engines will require a fresh inspection, if such time is less than a year or six months, as the case may be.

The dispositions of Art. 79 are applicable also to the inspection of machinery.

British passenger steamers are surveyed once a year : Mer. Ship. Act, 1872, § 8.

83. Captains and skippers cannot obtain their ship's papers unless they shew that they have complied with the preceding article.

84. Health officers will not give certificates and health passes to coasting vessels, unless the captain or skipper of national vessels produce a muster roll bearing the *visa* of the Maritime authority of the place. The above dispositions are applicable to the captains and skippers of foreign ships, whose papers must also have the *visa* of their respective Consuls.

## CHAPTER VIII.

### *Of the Carriage of Passengers.*

85. The carriage of passengers on sailing and steam-vessels is the subject of special inspection and watchfulness on the part of the Maritime authority within the Realm, and of the Consular authority abroad, in accordance with the rules laid down in the following articles.

86. The regulations will determine the maximum number of passengers, having regard to the class of vessel and length of voyage, and will lay down conditions for the internal arrangements of the ship, for providing and keeping the provisions, for the complement of boats and life-saving apparatus, and all other proper regulations and safeguards.

The regulations are contained in two laws, *Legge Penale sulla sanità marittima*, 31st July, 1859, and *Regolamento sul trasporto di passeggeri nei viaggi marittimi*, 11 Feb., 1859.

87. Whatever be the nature of the voyage and the number of persons embarked, the sanitary authority will prohibit the embarkation of a person who is sick, or recovering from a long and serious illness.

Whenever, for such a reason, a person who is embarked ought to be left on shore, he must be landed with his goods and family where required, and he shall have returned to him any advance he has paid on account of freight.

88. The embarkation and carriage on ocean or long coasting voyages of lunatics, idiots, deaf-mutes, blind persons, or cripples, or minors under 18 years of age, is not

allowed, unless they are accompanied by their parents or guardians, or some person who offers security for the assistance they need during the voyage, and for their maintenance on arrival at their place of destination.

Whilst preserving the disciplinary powers under Arts. 92 and 451, the captain may, in case a person who is embarked is guilty of seriously disorderly conduct, or vexatious demands, or acts injuriously to the crew, report the circumstance to the Maritime or Consular authority at the first place at which the vessel calls, and such authority can order that the person be landed. A person so landed has no claim to the restitution of passage money paid in advance.

All passengers, on embarkation, must give up their weapons to the captain, who will take care of them, and restore them at the time of landing.

Cf. Passengers Act, 1855 (18 & 19 Vict., c. 119), §§ 44, 45, 60, 62; Mer. Ship. Act, 1854, §§ 324, 325; Mer. Ship. Act, 1862, §§ 35—37. The last two as to Passenger Steamers.

89. On voyages beyond the Straits of Gibraltar and the Suez Canal, when the number of persons on board, including the crew, exceeds 150, a medical man, approved by the health officer, on the nomination of the captain or ship's husband, must be shipped.

In "passenger ships," which are commonly called emigrant ships, a doctor must be carried by British law where the probable length of voyage exceeds a certain number of days, and the number of passengers exceeds 50, and in all cases where the total number of persons on board exceeds 300. Passengers Act, 1855 (18 & 19 Vict., c. 119), §§ 41, 59; see also note to Art. 91.

90. The manner in which the Maritime authority shall carry out the inspection and watching over the carriage of passengers shall be laid down by regulations.

These regulations are contained in the *Regolamento sul trasporto di passeggeri nei viaggi marittimi*, 11 Feb., 1859.

91. The preceding arrangements are applicable to foreign vessels embarking passengers within the Realm, and such vessels will also be subject to special inspection, if required,

on previous notice being given to the respective Consular agencies.

To secure the execution of their duties and undertakings, captains of foreign ships must give bail in the manner and for the amount determined by the Regulations.

Cf. Passengers Act Amendment Act, 1863 (26 & 27 Vict., c. 51), § 3; 37 & 38 Vict., c. 88, § 37 (2). In a foreign "Passenger ship," where one-half of the passengers are British subjects and the captain and officers do not speak English intelligibly, interpreters have to be carried: Passengers Act, 1855 (18 & 19 Vict., c. 119), § 40.

F. W. RAIKES.

#### IV.—THE LAND TRANSFER BILL, 1887, AND THE AMENDMENT OF REAL PROPERTY LAW.

ALL efforts to establish a general system of registration of land, or rather of legal rights as to land, for England, have hitherto failed. Last year, however, we were threatened with another legislative effort, which, if passed into law, would have caused great disappointment to its promoters. What, let me ask, are the grievances as to Land Registration; and how, if at all, can they be removed? They are that, without a complete system of Land Registration, great uncertainty exists as to titles, and great expense has to be incurred in examining them at each transfer, or mortgage, or important dealing with real estate; and that, by a complete system of registration great expense would be incurred by the present or future owners of real estate in availing themselves of the provisions of a Land Registry; and that, under the existing system, if the titles are good, the expense is thrown away, and if they are not, the titles cannot be registered. If, therefore, intending legislators would attend to the actual grievances in existence, and would endeavour to avoid the mistakes of their



predecessors in this matter, they would, perhaps, discover what was best to be done. Much has recently been effected in England in the simplification of Conveyancing of land and for the Registration of titles to land. But Conveyancing and Registration are two very different things, and ought to be treated apart from each other. Nay more, the reform of the law of Real Property, and the reform of the art or system of Conveyancing, although closely related, are also quite distinct.

During the last fifty years, a great improvement has been made in this country in our system of conveyancing, both by the abolition of the old common forms of conveyancing, and by giving much greater powers to limited owners over Real Property than they formerly possessed. By 3 & 4 Will. IV., c. 74, Fines and Recoveries were abolished, and short and simple conveyances were substituted for the cumbrous, tedious and costly assurances then in use. By the Real Property Limitation Act, 3 & 4 Will. IV., c. 27, the periods of prescription were fixed at ten and twenty years for actions for the recovery of real property; and by the Real Property Limitation Act, 1874, 37 & 38 Vict., c. 57, these periods were reduced to six and twelve years. In 1873, Lord Selborne proposed to reduce them to five and ten years. By the Vendors and Purchasers Act, 1874, 37 & 38 Vict., c. 78, the period of prescription was reduced from sixty to forty years, for starting with the root of Title, and was such as the Court of Chancery would force on a purchaser in open Court. Under the last-mentioned Statute, it is enacted that Recitals in Deeds after twenty years are sufficient evidence. By 7 Will. IV. and 1 Vict., c. 26, the English Law as to Wills was codified and amended; and then came the Settled Terms Act, 8 & 9 Vict., c. 112, by which land in England was relieved of many burdensome restrictions. Then, by the Act of 1862, 25 & 26 Vict., c. 67, Trustees and heirs were enabled to prove their

Titles in a formal manner. Of this Act, practitioners have never taken much advantage. But, if we are now to have a radical change made in the succession to Real property in England, something of the kind contemplated by this Act will be absolutely necessary, in order to prove who are the heirs and representatives of testate and intestate persons deceased. The old practice of granting service to heirs, although obsolete in England, has never gone out of practice in Scotland, and affords a simple and cheap mode of proving who are the persons entitled to real estate on intestacy or testacy. In Scotland, when a person executes a Deed, Conveyance, or Will, as to real estate in favour of individuals by their names, for themselves, or in favour of Trustees for others, and to take effect at death, no service is required, and the right is complete on the death of the grantor. But the rule is different when the destination is in favour of a class, or an uncertain heir. In England, a representative as to Real property must be made as certain as a representative as to Personal property, and ought to be endowed with the same, or similar, legal powers as a personal representative, and might be one and the same person. Unless he is some certain person with a public legal title, doubts and trouble will be interminable. Further, by the Conveyancing and Law of Real Property Act, 1881, 44 & 45 Vict., c. 41, encumbered lands could be sold by the Court of Chancery, without the consent of the encumbrancers, and the purchase-money paid into Court; and short forms of Conveyances and Mortgages and Discharges were annexed to the Act. Then, again, by the Settled Estates Acts, 1877, 40 & 41 Vict., c. 18, and 1882, 45 & 46 Vict., c. 38, estates tail could, for the most part, be sold by the Tenant for life, and purchasers were relieved from the disabilities attaching to purchasers from such persons, while the rights of all parties interested in the proceeds could be decided by the Chancery Division of the

High Court of Justice. Now, at last, it was proposed by Lord Halsbury's Bill of last year that the Statute *Quia Emptores*, 13 Edw. I., c. 13, should be repealed.

As I have already, in the pages of this *Review* (*Law Magazine and Review*, No. CCXXIX., for August, 1878) discussed the question of English Land Registration from an historical and practical point of view, I do not propose to repeat what I have stated in that Article. Most people who have given any attention to the consideration of English Land Registration know that Land Registries exist for the County of Middlesex, excepting the City of London, and for the three Ridings of Yorkshire, and for Kingston-upon-Hull. They also know that, in 1870, the Royal Commissioners appointed to enquire into English Land Registration recommended the abolition of the Middlesex Registry, on the grounds that it caused great trouble and expense, and afforded no additional security or other special advantage. Their recommendation has not yet been adopted. This Registry is no burden to the country. It pays all its own expenses, maintains a sinecure Registrar with about £5,000 a year, and gives a yearly surplus of about £10,000 a year to the Treasury. A Land Registry should pay its way; but it should not be expected to do more. The official fees at the Land Registry should be one-quarter of what they are now.

The Royal Commissioners made their recommendation (1) because of the delay in carrying through transactions, and the want of a full and proper Index; (2) because of the enormous number of the transactions in land in Middlesex; and of the decision in *Le Neve's* case, reported *Atk.* 666, *Ambl.* 436, in which it was held that a purchaser or mortgagee was bound by knowledge of a prior sale or mortgage; and also of the decision in *Morecock's* case, *Ambl.* 678, that registration was not notice to third parties. After the decision of Lord Hardwicke in the former case,

and of Lord Camden in the latter, the Middlesex Registry fell into disrepute. In all the District Land Registries of land the usual mode was by the registration of Memorials, which were practically Copies of the Principal Deeds.

In Scotland and Ireland, separate and distinct systems of Land Registration have been established. Of the Scotch system, which is based on a registration of all Conveyances, Mortgages, Charges and Discharges affecting the legal title to Real property in Scotland, and on priority of legal and equitable rights by priority of registration, enough has been said in the previous Article in this *Review*, to which I have referred. As to the Irish system, it will be sufficient to state that, in Ireland, Common Law titles were found to be impossible, and that, consequently, in 1849, Royal Commissioners were appointed to grant Parliamentary titles to Real property in Ireland, under the Act of 12 & 13 Vict., c. 77, and that, in 1858, a permanent Court of Law was established under the Act of 21 & 22 Vict., c. 73, for all real estates, whether encumbered or not. The existing conditions as regards the solvency of owners of Real property in England, and the state of their Titles, are quite different from what they were in Ireland forty years ago, and require a different mode of treatment. Before I consider the Land Transfer Bill of 1887, the further elucidation of the problem of Land Registration does not seem to me to be inappropriate here.

In Prussia, an excellent system of Conveyance of realty, and of registration of titles as to land exists under laws passed in 1872. The principal features of the system are (1) that the full title of Ownership in land can be obtained only by means of registration; and (2) that real charges, mortgages and debts on Real property must be registered to acquire full legal validity. In Prussia, a legal surrender by the registered owner takes place before the Land Registration Judge, and consists of a consent to the

registration of the new as the registered owner. As soon as a right of ownership, or a mortgage, or other charge on Realty is placed on the register, the registration is not invalidated by the knowledge of a right in some third party. Further, in Prussia, the right to charge, or burden, or transfer exists only in the registered owner, or in a Court of Law. The official charges are moderate, and e.g., a Transfer is quickly effected by the Land Registration Judge on the execution of a Deed of Sale, and on the making of certain oral declarations by the principals. If required, a copy of the entry on the Register can be obtained for a trifling sum. In Mr. Scott's *Report*, published amongst the Parliamentary Papers of 1887, will be found specimens of the Prussian Land Register and relative Nominal Register. In England, according to the rules now in force at the Land Registry Office, no formal Deed of Conveyance is required; and the official fees are the same as on a Transfer by a Deed of Conveyance; and Transfers of rights to Land may be effected with or without the assistance of Solicitors.

Lord Cairns, while Sir Hugh Cairns, as Attorney-General in 1859, introduced two Bills in the House of Commons, and he was much praised by Lord Brougham for the admirable provisions contained in those Bills, which were based on the recommendations in the Report of the Royal Commissioners of 1857. Sir Hugh Cairns then proposed a registration of the fee simple, on and after a thorough investigation by a Landed Estates Court to be created. Lord Cairns was the Pioneer in England of a Registration of Landed Titles as contra-distinguished from a Registration of Deeds, or in other words, of evidences of Title. He condemned the old practice of transferring lands as "cumbersome, dangerous, dilatory and expensive." His two Bills, after passing the second reading, were stopped by a dissolution of Parliament, and by the formation of a new

Government. Then followed Lord Westbury's Act of 1862, "to facilitate the proof of Title to and the conveyance of Real property." This Act was based on the clearing up of the Title to a certain date, the registration of an indefeasible title to land, the registration of all transfers and mortgages thereafter, and the registration of well defined estates and interests, legal and equitable. Lord Westbury intended that the register should be a mirror of the Title, and that, after registration, there should be an indefeasible title—that is to say, such a title as a Court of Equity would accept and enforce. This Act made no provision for qualified or possessory titles.

By the Act of 1862, 25 & 26 Vict., c. 53, there was established, for the first time in England, a Register of Titles, as distinguished from a Register of Evidences of Title. The leading features of Lord Westbury's Act of 1862 were the registration of the fee simple and of registered notices for the protection of equitable interests, and the proposed establishment of Central and District Registers, and the ministerial and non-judicial authority of the Registrars. No Land Court such as was contemplated by the Attorney-General (Sir Hugh Cairns) in 1859, was established under the Act of 1862. But an indefeasible Title, if wished, was obtainable under the Act by means of the Conveyancing Counsel of the Court of Chancery, and by the intervention of the Court itself in matters of difficulty, and was such a Title as was a marketable Title, and such as the Court of Chancery would enforce against a purchaser in a suit for specific performance. As proprietors often object to enter into contracts for marketable titles as to Real property, and purchasers often accept Land Titles which are not marketable, large numbers of English Titles were, by this Act, necessarily excluded from the possibility of registration. And, in fact, as the vast majority of landed proprietors, or their

solicitors and legal advisers, did not see any advantage in registering the Titles of their real estate, the great Act of 1862 ended in a complete failure.

Under Lord Westbury's Act of 1862, the Registrar, although not a Judge, practically exercised Judicial functions as to the interpretation of the wills, settlements and conveyances which came before him. He was, in fact, obliged so to act in order to give effect to the statements which were submitted to him on the Titles sent to his office for registration, and in order to determine the actual interests of parties before he could make a declaration of title by entering the grantee as authorised by him. The value of the property registered under Lord Westbury's Act down to 1876 amounted to six millions sterling, which is utterly insignificant compared with the amount of the transactions which took place between 1862 and 1876. No official error; however, is, I believe, known to have been made by taking advantage of the Act. If the Act had been generally adopted, it would have broken down. This latter fact is important in reference to Lord Halsbury's Bill of last year.

For a general system of land registration, it is absolutely essential that it should be inexpensive and simple. At present, the official charges of the Land Registry in London for registering and transferring real rights and charges are not great. But the expense of examining the Titles before registration may be very considerable. Still, when this expense is once incurred and paid, the Acts of 1862 and 1875 can be worked cheaply and easily as regards indefeasible titles. If the registration of possessory titles and of mortgages, charges, and discharges were to be compulsorily enforced, and if applications for indefeasible titles as to land were left to the voluntary acts of the parties interested, a great stride would be made towards including on the Land Register or Registers every important transaction in regard to Land, and making the Register or



Registers a complete Mirror of the landed Titles in England. Under the General Rules, passed by the Lord Chancellor and the Land Registrar on the 24th December, 1875, a reference, if necessary, was allowed to be made by the Registrar to the Examiners of Titles appointed under the Act of 1862, or to the Conveyancing Counsel of the Court of Chancery. Since the passing of the Act of 1875, the examinations of Title have been performed by the Land Registrar and his assistants in the Land Registry, and not a single title has been referred by him to the Conveyancing Counsel. I think the Legislature would do well to continue the present Register of indefeasible titles, and to create a general Register of assurances and relative charges, &c., and to make the one or the other mode of Registration compulsory for the complete legal Title of landed estates in conveyances, charges, and discharges, and should leave the parties concerned to adopt whichever mode was most convenient for them. I do not see the use of a Landed Estates Court in England in any form or to any extent ; but, if its functions are not enforced compulsorily, I would be inclined to let it alone for the present.

Lord Westbury's Land Registry was, as I have stated, constructed to give a complete picture of the fee simple, but comparatively few persons were enticed into it. Subsequently to registration, the Act of 1862 gave an indefeasible title to all sales, mortgages and contracts for valuable consideration, or to the real estate on the Register. But the Act itself was badly drafted, its language was loose and without legal precision, and its failure was sarcastically predicted in 1862 by the Incorporated Law Society. The Act of 1862 could not be set to do its work. After being nearly three years at a standstill, it was, along with the Middlesex Registry, on the motion of Lord Cairns, made the subject of a Royal Commission appointed in 1868. In the year 1870, the Royal Commissioners reported to the



Queen the result of their enquiries and conclusions, which are contained in a Memorandum in the Appendix to their Report, and in their scheme to improve the registration of land, and to facilitate the proof of title to real estate, and the conveyance of real estate, with an indefeasible title, and to alter and improve the constitution and jurisdiction of the Tribunal established by the Act of 1862. The Report of 1870 condemned the plan of the Act of 1862 because (1) it enforced the production of a marketable title; (2) it necessitated a determination of boundaries; and (3) it registered partial interests. In that Report, the Royal Commissioners recommended (1) that all persons claiming a fee simple, or a right to the fee simple, might be registered; (2) that there should be no determination of boundaries; (3) that charges should be protected by caveats; (4) that long leases should, for the purposes of registration, be treated as freehold; and (5), that enquiries and examinations of title should be made by the Registrar, as far as could be given, for a good title, and as distinguishable from a marketable title, and to prevent the registration of fictitious titles. The Royal Commissioners appointed in 1868 were by no means unanimous in their views as to the matters referred to them. Some of them objected to leases and charges being placed on the Land Register, and also to the establishment of a Landed Estates Court.

The Report of 1870 was followed by Lord Hatherley's Bill of the same year. Under this Bill, a Board, consisting of the Lord Chancellor, the Chancellor of the Exchequer, and the Registrar, was proposed to be formed, and rights as to the fee simple of land, and certain incumbrances only were to be registered, and all other registrable rights as to land were to be protected by caveats, cautions, and inhibitions. Lord Hatherley's Bill also proposed that, unless on a sale by the Court of Chancery, there should be no

\*investigation or guarantee of title as to land, and that, after two years from the passing of the Bill into law, there should be a compulsory registration of all registrable land titles and charges. This Bill, therefore, would, if passed, have destroyed the Tribunal established under the Act of 1862, and have substituted no other in its place. It did not pass into a law, but into the limbo of good intentions. Still, the general principles of this Bill are not unworthy of the serious consideration of the reformers of Land Registration.

Thereafter, in 1873, Lord Selborne introduced a Bill on Land Titles and Land Transfer. On the suggestion of Lord Cairns, the then Lord Chancellor had it re-settled by the late Vice-Chancellor Hall, who was on all hands recognised as an eminent and experienced Conveyancer. Although this Bill proposed to establish a Board for Land Registration, it provided that the duties of the Board should be discharged by the Registrar, who was, in fact, to perform the duties of a high Judicial Officer, and to decide what were good holding titles; what was an indefeasible title; what objections could be raised before him, and did not require to be sent to the Court of Chancery; and to determine boundaries; and to decide on the satisfaction of estates; and yet he could not order a caveat to be removed from the Land Register. Lord Selborne's Bill was dropped in 1874; was afterwards taken up again in 1874; and was subsequently re-drawn and re-settled and passed into law in 1875 under the auspices of Lord Cairns.

The Bill then introduced by Lord Cairns proposed to establish in effect, though not in name, a Landed Estates Court, and, therefore, a Land Registration Judge to examine Titles, hear objections, and summon parties before him. By this Bill the Land Registration Judge did not, as in former Bills, require to refer to a Judge of the Court of Chancery. He was actually made a Judge of First

Instance, and had judicial and administrative functions entrusted to him. As an amendment on this Bill, Lord Selborne proposed in the House of Lords that the Bill should be made compulsory ; but was defeated by a sweeping majority. Lord Cairns' Bill became the Land Transfer Act of 1875. The Act 38 & 39 Vict., c. 87, and the Act of 1862, so far as unrepealed, are the Acts under which the London Land Registry exists. These Acts apply to England and Wales.

In 1875, Lord Cairns suggested that the Registrar of the Land Registry should be constituted a Judge of the High Court of Justice to determine all questions of title and evidence as to landed property, charges and incumbrances, and to decide on all claims for absolute, qualified or possessory Titles in land, and to order issues for Jury Trials, and, unless by leave of Court, to give final decision on all matters coming before him. His Lordship's suggestion was not adopted ; and, in his opinion, the Act of 1875, therefore, lacked an important feature to make it work with perfect success.

The work at the Land Registry Office requires constant Judicial supervision ; but the Court of Chancery cannot give the necessary time to it. As I have already pointed out, Lord Cairns, as far back as 1859, said in the House of Commons that it was essential for the proper working of a system of Land Registration of Titles that it should be founded on a Judicial basis, with proper powers, and such as would command the respect and confidence of the public. In 1873, Lord Selborne said much the same thing, and cited the precedent of the Irish Landed Estates Court in support of his opinion. He also said that the work of the Court would require to be conducted by persons of position, dignity and experience, and who were possessed of authority and weight, personal knowledge and skill. He added that it was utterly impossible to have a Land

Registration of Title, unless there was to be some person of authority, or a Court of Law, set up for the purpose, to decide on all questions that would arise as to the registration of land, and of charges on realty. Although Lord Cairns subsequently dropped the Board of Registry in the Bill of 1874, he rightly preferred a regularly constituted Court to realise his aims. His hope was that, if the Bill of 1875 should prove a success, the Conveyancing Judge would be made a Judge of the Supreme Court, and be entrusted with all the matters connected with the registration of landed Titles. By the Act of 1875, the office of the Land Registry and its officials, established by the Act of 1862, were continued.

The Act of 1875, like the Act of 1862, established voluntary, and not compulsory, registration of land titles. It established a separate Land Register for Leases. It could do, and did, nothing towards facilitating the alienation of land held under settlement, but the law of settled land was greatly modified in regard to the power of alienation by Lord Cairns' Settled Estates Act of 1882. It sketched out a plan for the gradual formation of a Land Registry of indefeasible Titles, and was the same, in its objects, as some persons have proposed for a complete registry of assurances, preparatory to a compulsory registry of indefeasible titles. It was not intended to confer a conclusive right as to boundaries. It authorised District Land Registries to be established by the Lord Chancellor, with the consent of the Treasury. Although, to facilitate its easy working, Lord Cairns wisely abandoned the safeguards of the Act of 1862 as against frauds, the Act of 1875 has turned out to be almost as great a failure as Lord Westbury's Act of 1862. Without exaggeration, both Acts have been comparative, almost absolute, failures as to the objects they were intended to accomplish. Under Lord Westbury's Act of 1862, an indefeasible title to land could be obtained only after regis-

tration, and for good consideration. By Lord Cairns' Act of 1875, an indefeasible title could be obtained at once, and it could also be ultimately obtained under specified conditions. The Act of 1875 was intended as a remedy for the vexatious delays which took place under the Act of 1862, But it did not succeed in persuading the public, or their solicitors and legal advisers to adopt its provisions. For this result, were they, or any of them, in any degree to blame? I have no doubt they were to some extent; for a simplification of Titles to land is, I think, contrary to the pecuniary and present interests of English Solicitors and Conveyancing Counsel, and certainly interferes to a large extent with long-established habits and customs; for if conveyances are to be shortened, and land titles and mortgages are to be simplified, and the whole system of English conveyancing is to be revolutionised, there must be a change in the scale of fees for conveyancing business, and the English conveyancers of the future must enter upon new methods. The ignorance of the general public, and the opposition or indifference of the Legal profession, and the absence of compulsion in the Acts of 1862 and 1875, have practically rendered these Acts nugatory. The absence of compulsion would alone explain their failure. Was there any other cause for the failure of the Act of 1875? I think there was. I believe that the Act of 1875 did nothing to remove the just objections raised against the Act of 1862 as regards the preliminary expense to be incurred, as to the advantages to be obtained by registration, or as to the reluctance of owners of Real property to expose their Titles to slanderous or injurious imputations. The remedy, as to these things, is to allow persons who wish for indefeasible Titles to have the means of getting them at their own expense, and not at the expense of the country; and to allow those who do not wish for, or who cannot make out, such Titles, to register their titles at their own expense;

and to enforce one mode or the other in all transactions as to landed property.

In 1875, Lord Selborne pointed out that the Act of that year ought to have been compulsory, and the effect of registration irrevocable, and that, in working the Act, there would be great delay and expense incurred on the first registration. He rightly held that a compulsory and irrevocable registration was an essential feature as a preliminary to the re-organisation and improvement of land Titles in this country. To remedy an undoubted defect in our Real Property laws and regulations, another attempt was, last year, made by Lord Halsbury, and I have now to direct attention to the present Lord Chancellor's Bill.

With the main objects of Lord Halsbury's Land Transfer Bill, which passed the House of Lords, and was sent down to the House of Commons last year, I greatly sympathise and generally agree. Still, I am strongly of opinion that the general principles of this Bill are imperfectly worked out; that the arrangement of the clauses is exceedingly faulty, and that the Bill itself, if passed into law, would not greatly facilitate the transfer of land in England, and would considerably increase the expense of transferring and mortgaging real property in England. In passing through the House of Lords, this Bill was greatly improved.

Last year Mr. Kenion, in addressing the Incorporated Law Society of Liverpool, spoke of the re-introduction of the Lord Chancellor's Bill in 1888, and said the simplification of Land Titles, and a reduction of expense in connection with them, was needed. He also expressed an opinion, which I believe to be well founded, that we were walking towards a registration of possessory titles, with the intention of leaving the titles to mature, and without any official enquiries. He expressed himself as being in favour of District Land Registries, and opposed to one

central office in London. He held, and I think rightly to a large extent, that the introduction of the principles and enquiries involved in the English Land Registry Acts had destroyed those Acts. What is the essential difference between Lord Cairns' Act of 1875 and Lord Halsbury's Bill of last year? I would say that, so far as the latter is concerned with Land Registration, it consists in compulsion being added in the Lord Chancellor's Bill. If this be the main difference between the Act and the Bill, what chance is there for the latter, as a Statute, removing the present grievances?

In the first part of this Bill, Lord Halsbury proposed gradually to change the concentration now existing at the Land Registry, and establish Local Registers in Districts, and to have a Board experienced in administration and conveyancing established in London. I see no objection to the gradual change or to the Local District Registers here contemplated. In any Land Registration for England and Wales, Local District Registers are indispensable. But I do most seriously object to the establishment of a Board experienced in administration and conveyancing in London. What is the proposed Board to do? Nothing less than to act as a Court of Justice, and to determine the rights of parties in land, as to mortgages, charges, settlements, and boundaries.

By the Bill, an Inferior Court of Law is, in fact, proposed to be maintained as to Land Titles. This proposal, I submit, is a fundamental error. It is no duty of the State to decide on Land Titles to any greater extent than on Ships' Titles. Unless in the ordinary Courts of Law, the duty here proposed to be undertaken by public officials should not be undertaken or discharged by the State. The best protection which a man can have in the ordinary pecuniary affairs of life is self-interest, and not the supervision of a *quasi* department of State, even with an indemnity, as proposed by the Bill.



against the blunders of State officials. Under clause 6 of the Bill, Judicial functions are clearly devolved on the Land Registry Board, which may decide questions arising out of executory limitations and the like. The whole scope of the Bill was to give titles under a sort of Judicial sanction, and would either, in the case of boundaries, have involved much unnecessary litigation, or else the clauses as to boundaries would never have been utilised. The clauses as to boundaries would have made the Bill a splendid boon for the lawyers. That they would have facilitated the Transfer of land I do not believe.

I am aware that similar powers are possessed by the Principal Land Registrar at the London Land Registry. But I protest against the powers already possessed and exercised by him and the officers of the Land Registry, and proposed to be continued, enlarged, and extended under this Bill, and I contend that the Judicial powers now possessed at the Land Registry should be abrogated and annulled. I have no fault to find with the way in which these powers have been exercised by the late Registrar, or by his late Assistant and present virtual successor. On the contrary, I believe that both these learned gentlemen have admirably performed the responsible duties which have devolved upon them at the Land Registry office. But the principle under which those duties have been performed is most objectionable, and ought not to be tolerated in England. If exercised in the provinces by a body of men spread all over the country, no matter how well intentioned, and in many cases well qualified to perform the highest Judicial functions, they would be equally intolerable. The principle to which I refer is at variance with the well-founded and general principle of Jurisprudence that legal rights should never be determined unless by a Judge expressly appointed to exercise judicial functions in open Court, and open to all the world. Indefeasible titles should



be established by a regularly constituted Court of Law, and nowhere else.

Originally, as I have already indicated, Lord Cairns intended to establish a regular Land Court in England; and Lord Brougham agreed with him that such a Court was necessary for the perfect working of a compulsory registration of Land Titles. But Lord Cairns was, in consequence of the parsimony of Parliament, obliged to restrict his proposal within the bounds prescribed by the Treasury, and none of his successors has dared to ask for the funds necessary to make a compulsory system of registration of Land Titles possible or endurable. Now, again, the proposal of the Lord Chancellor is to make the registration of land Titles compulsory, and to do so without the necessary judicial and executive staff. To make the new system work, a compulsory system of insurance is to be enforced, to enable the Government to make up for losses by forgery or frauds, or the blundering of the Board, and of the subordinate Local District Registrars. Is an insurance fund required for Sales by the Court of Chancery, or under the Vendors and Purchasers Act of 1874? If not, why should there be one for the acts of the Land Registry Office or Court? Are the judgments of our lowest or highest Courts, when obtained by fraud, forgery, or blundering, protected by an indemnity or insurance fund? If not, why should we so protect the judgments of the Land Registration Board, or of their subordinate officials? I fail to see why an entry in the Land Registration Court should have any greater privileges than an entry in the Supreme Courts of the country.

Various plans, voluntary and compulsory, have been proposed for land registration in this country; but all of them have hitherto failed, or fallen to the ground. For a long time, and confined to certain districts, there have existed, as I have pointed out, registries of assurances in

England. If these had been properly worked, and supplied with adequate and sufficient staffs, and ample and accurate indices, and had been based on the essential principles of every useful and general system of land registration, namely, that priority of registration gives priority of legal right, and that from and after a fixed date, the Registers shall disclose the whole legal rights and obligations attaching to any real estate, no complaint would now have justly been made against the land registration of this country, and the partial system now existing would have been cheaply and expeditiously extended to every part of England. But the English Land Registries have never been properly worked, and the principle of priority has never been fully appreciated at its right value and judicially applied, and the problem of Land Registration is now in a most unsatisfactory condition. Instead of abolishing the Middlesex and Yorkshire Land Registries, as proposed by the Lord Chancellor's Bill, why not enlarge, improve, and extend their operation all over the country and make them compulsory as regards legal rights? If anyone wishes to get an indefeasible title to land, why not let him go to the ordinary Courts of Law for the purpose? Or, if thought expedient, why not let him have the opportunity of availing himself of a Central Land Registry Office in London for Indefeasible Titles?

What, I think, we really should have in England, is a compulsory, and yet self-acting system of voluntary and universal registration of all landed conveyances, mortgages, charges, and discharges in a prescribed statutory form, giving—(1) the names and designations of the grantor and grantee; (2) a sufficient description of the thing transferred by full description or reference, together with the consideration, price or loan, and the right conferred; (3) the date of entry; (4) the date of the deed; (5) the names and designations of the party or parties who authorised the

registration, and also of the party or parties who actually lodged the deed for registration. Parties might thus be at liberty to make their Real Property Deeds as long as they thought fit; but would not be at liberty to load the Register with a mass of useless verbiage. They might even be indulged in their desire, whether reasonable or unreasonable, to have the whole of their Real Property Deeds recorded from the beginning to the end in a Register for preservation, on condition that they paid for this extra privilege, which, in many cases might be desirable, *e.g.*, where a property becomes divided amongst various proprietors, and where, of course, only one person can have possession of the leading Deed. The particulars to which I have referred should be recorded in a Register kept for a certain area, as shewn and defined by the Ordnance Survey Maps, along with the hour, day, month, and year of the presentation of the Deed for Registration. All these particulars might also, although not necessarily, be entered in another Register under appropriate geographical headings or descriptions of the property; and, thus arranged, they would disclose, at a view, a ledger-like statement of the Title of every property on the Register. Then, the Daily Register and Ledger Statement should have full and complete nominal and geographical indices attached to them, for the purposes of search and reference. To carry out this scheme, England and Wales should be divided into suitable Land Registry Districts, on the basis of Urban and County Registers. The duty of the officers of the Land Registry would be purely ministerial and clerical, and could be performed easily, well and economically on thoroughly business principles, and at no risk of loss to the State, or great expense to the people. The system which I have here sketched out is practically the Scotch system, which has been in use, for many generations, to the great satisfaction of the people. It is

also, in a modified, and I hope improved form, that of the English Land Registers, which, as I have said, have not been properly kept or managed in England. Neither in England nor in Scotland is there a Ledger Register of Deeds. The general effect of such a system as I have here suggested would be the same as a Judgment by consent in a Court of Law, and, therefore, binding on all the consenting parties, and their representatives, but not on strangers, and preserving a permanent record of the event; and, by an easy process, laying the foundation for a speedy execution, and, if necessary, possession, as *e.g.*, in the case of the Registration of a Bill of Sale of Personal Property. The Registers ought to be open to all who choose to inspect them on the payment of a moderate fee.

For a registration of Land Titles, the arguments must be the great public benefit to be obtained by it, and the consequent simplicity of titles, and the facilities of Transfer and Mortgage thereby afforded. I, therefore, urge that land registration should be left to the parties concerned as to the times and circumstances when registration of their rights would be necessary or desirable, but always subject to preferences by priority of registration of Conveyances, Mortgages, or Charges, for good consideration, and so long as they are *bonâ fide*, and not fraudulent. *Primâ facie*, priority of registration should determine the legal right, and any person wishing to overthrow this presumption ought to be obliged in a Court of Law to prove fraud, or no consideration, or collusion. With regard to a registration of incumbrances simply, I have to state that, no doubt, a registration of all incumbrances, charges, and discharges affecting Real property would be highly useful; but all the arguments for such a limited system of registration are available, with tenfold force, for the registration of all transfers affecting Realty. I approve of Sir Horace Davey's proposals, as far as they go, that, as regards

incumbrances and charges, the parties concerned and dealing with Real property by way of mortgage or charge, should make all necessary enquiries and run all risks. I myself think, as I hope I have already shewn, that a Land Register should disclose the whole of the legal rights affecting Real property from and after a certain date to be fixed by the Legislature. By adopting the principle of priority of registration as conferring priority of legal right, the English rule of tacking of Mortgages would be effectually and finally abrogated and annulled. I see no objection to Real property being made available to bankers and others for future advances to an amount stated in the Mortgage.

By Lord Halsbury's Bill, the system intended to be established is not a Registration of Assurances, Mortgages, Charges and Discharges, but a system based on the issuing of Certificates of Title, and on a compulsory registration of the Titles involved in all Conveyances, Mortgages, Charges and Discharges affecting land in England, with indefeasibility of Title on registration, or five years thereafter. Such a system necessarily implies an investigation and approbation of Titles before Certificates are issued. To such a system there are these three serious objections, namely: (1) It is costly, (2) it is dilatory, and (3) it is unsatisfactory. It is costly, because it involves a thorough investigation of the titles by the legal advisers of the owners, and might involve another investigation by the officials of the Land Registry, or their deputies. It is dilatory, because the Officers of the Land Registration would be compelled to give numerous notices which an ordinary legal adviser would consider unnecessary or undesirable. It is unsatisfactory, because the extra cost and delay involved would, in most cases, be without any equivalent advantage. Whatever may be said or thought by some ignorant persons, the titles to land in England are, as a whole,

perfectly good. Therefore no Land Registration Court is required in England, of such a kind as may have been in Ireland, to clear up titles, sell estates, discharge incumbrances, and give a good Parliamentary title to purchasers. If private parties, dealing with Real property in England either by sale, mortgage, or settlement, perform their duties as men of business do in dealing with Personal estate, *e.g.*, in ships, Consols, shares of companies, there is, generally speaking, no need for any further investigation by a Board, or by a regularly constituted Court of Law, or for yearly or any advertisements in any shape or form whatever, as proposed by Lord Halsbury's Bill of last year. If they do not so perform their duties, the State is not called upon to undertake the duty on their behalf, or to adopt and maintain any universal scheme of land registration to protect the careless at the expense of the careful, or at the expense of the Nation. Private interests are best protected by private individuals themselves. Therefore I entirely disagree with the mode in which Land Registration was proposed to be carried out by the Lord Chancellor's Bill of last year. In my opinion, a system of Land Registration should essentially be for preservation and publication,—*i.e.*, for preservation of a statement or outline of all Deeds affecting Real property, and for publication to all and sundry who propose to deal with such property. The object of a Land Registration should be not to determine rights, but to let all men know what legal rights are claimed. It should not be final and conclusive as regards legal rights. It should merely complete and legalise rights so far as they are otherwise just, and can be upheld and defended in a Court of Law.

Part II. of the Lord Chancellor's Bill was intended to make registration universal. The aim of this part of the Bill was excellent; but it was badly conceived and worked out. What should have been done was to declare that

legal interests in land shall be made effectual only by registration of the right claimed, and that these rights shall rank in law by priority of registration, and then the legal rights should have been left to be determined by a Court of Law. In dealing with land by purchase or mortgage, the rule of priority of registration would be a sufficient protection almost universally, and a sufficient ground for compelling all parties, as a rule, to secure their rights against adverse claims arising subsequent in date to their own. I am aware that the Bills of 1870, 1873, and 1874, contained clauses for the compulsory registration of Titles after the next sale. But I am bound to add that, in my opinion, people ought to be allowed to run certain risks arising from non-registration without their titles to their property being totally changed in character, as was proposed by the Bill of last year. Whatever the form of compulsory registration, no doubt, in consequence of the late Realty Limitation Acts, the way is now made clearer and simpler for a compulsory registration of land Rights. If compulsory registration had been adopted in 1875, Lord Cairns' Act of that year would have been repealed in the following year. Clause 9 of the Bill points to the real and necessary basis of every system of Land Registration, and that is that no legal estate shall be established, unless by conveyance and registration. But this principle should be applicable to the same or similar rights, and not to those of a superior or inferior kind.

Part III. of Lord Halsbury's Bill contemplated the raising of possessory or qualified titles as to land to the rank of indefeasible titles, and the determination of boundaries, after public notices to all persons concerned. Under Clauses 10 and 11 a possessory right in Real property was to be made absolute after five years. These clauses would reduce the prescriptive period as to Real property to five years, which is, I think, much too short. Such a short



prescriptive period may facilitate the transfer of land, but it will facilitate its transfer to wrong persons. Neither possession for a short period, nor registration alone, should give any one a right of ownership in Real property. But possession with registration on a conveyance neither fraudulent nor collusive, and after a certain limited period, say of ten years, might and ought to give an absolute right to land against all the world. In the Report of 1870 of the Royal Commissioners as to Land Registration, the effect of a possessory title without official investigation is pointed out, and happily illustrated. The Royal Commissioners say: Let us suppose that a purchase of land is made in December, 1868; that registration takes place in January, 1869; that a sale is proposed to take place in 1870, or, still better, in 1880, or 1890, then, investigation of the title must be made till the prescriptive period is covered, and then, in the course of time, the Register will disclose everything affecting the land.

As far back as 1854, the then Royal Commissioners recommended landed registration, without any enquiry beyond testing the *bona fides* of parties. What they proposed, Lord Selborne approved as regards possessory landed Titles, without preliminary investigations. These Royal Commissioners wisely foresaw that the preliminary official enquiries to registration would narrow the operation of any Registration Act; and seeing that they were, or were intended to be, judicial or quasi-judicial, no other result was possible. Nay more, the system of judicial or quasi-judicial enquiries will always exclude small properties from the most perfect and rigid system of compulsory land registration, and the trouble and expense involved even in many large properties, will cause the owners to be satisfied with simple, unregistered conveyances, until such time as, for one reason or another, the owners are obliged, or can afford, to register. If



any Land Registration Reformer supposes that he can force all landowners to register their Titles on the next sale or descent after the passing of his Bill, he will find himself greatly mistaken. Even although he thought he could do it, he ought not to try to do it.

I confess that I never could see why possessory ownership of land should not be registered for what it is worth, and, of course, without giving it any peculiar rights by virtue of registration. Registration of landed Title should take the place of delivery of Personal property, and do neither more nor less than such delivery. Some people have got it into their heads that land registration should, in some way or another, change the character of the ownership by and in virtue of the registration. I do not think so, unless in so far as Land Registration is a consent to judgment on an admitted claim or right. Land Registration ought, as I have stated, to be merely for the purposes of preservation and publication, and its whole effects should naturally arise in connection with these purposes. When legislation attempts to accomplish anything more than these things, it goes wrong. Under the Act of 1875, an unregistered Disponee can create estates and interests in land, and such as would be protected in law. But, wonderful to relate, the Bill of 1887 lowers an unregistered conveyance of land to the condition of a contract, and would propose to prevent the creation of estates and interests by such an unregistered disponee of land. Again, under the Act of 1875, unregistered rights in land could be constituted against an unregistered charge; but, under the Bill of 1887, no such rights could be constituted. This effort to compel all rights and charges to be placed on the Register, against the wishes and interests of the parties most deeply interested, was absurd as well as unjust, and would certainly have been futile.

This third part of the Lord Chancellor's Bill contains

several objectionable clauses; because it proposed to establish a legal indefeasible right by mere possession and registration, supplemented by enquiries which were either unnecessary or useless, and in every case would be expensive and dilatory. I would say, let parties register the rights they claim over Real property, and where disputes arose, let the ordinary Courts decide between the rival claimants; and, if desirable, let the parties have their legal rights determined under Lord Westbury's Act of 1862 for clearing up Titles. As a general, almost universal, rule, no disputes would arise; and, if they did arise, they would be decided by a Legal Tribunal after full enquiry and full discussion in open Court, and after the fullest publicity. A prescriptive right would, in the course of time, cure any infirmity of Title. In all other cases, claims would be settled by regular and properly constituted Legal Tribunals.

In Part III. of the Bill, proposals were made for an insurance fund to be raised by all parties using the Land Registers. These proposals were much too wide, extensive and dangerous ever to be passed into law. Why should the State undertake this duty? Why should it do so in England, and not in Scotland and Ireland? and especially why should the State give a protection to Real Property Titles not given to Personal Property Titles? In a schedule annexed to the Bill, there is a declaration that no compensation shall be made to a person where the loss arises from the act of the party injured, or of his Agent. Here is an important and vital modification of the Bill in a place where it ought not to be, and which, when appreciated in all its legal bearings as regards claims against the Government for indemnification will, I believe, on any re-introduction of the measure, cause the abandonment of this wonderful scheme of indemnification. Lord Halsbury must raise his proposed Land Registry Board to the

dignity of a Court of Law, and make its decisions irrevocable, save by way of appeal; or he must allow people to protect themselves, as they best can, in regard to their rights as to their Real as well as to their Personal estates. An indefeasible title is neither more nor less than a Title guaranteed by the State. Why should landed Titles be guaranteed by the State any more than Titles to Consols? The Titles, under the Act of 1862, were indefeasible for sale, mortgage, or contract for valuable consideration. Those under the Act of 1875 were indefeasible for all purposes, after a full and satisfactory examination. Now those under the Bill of 1887, if passed into law, would be indefeasible at the expense of the land-owners themselves, backed up by the long purse of the general body of Rate-payers. We may rest assured that the indemnification clauses of this Bill will never pass the House of Commons.

By way of illustration, the Insurance Fund is defended in the Memorandum prefixed to the Bill by the example and practice of New South Wales and Victoria. Still, I cannot help thinking that there is not sufficient ground for adopting the Insurance Fund, because there were practically no settlements of land in the colonies just named, and because the settlements of land in England are complicated and numerous. The Insurance Fund is meant to protect parties from the forgery and fraud of private individuals, and the blundering of the Land Registry officials. But I fail to see any good reason for calling on private persons who are careful in the protection of their own rights and dealings as regards Real property to protect the careless, or for calling upon the general revenue of the State, contributed by persons who would be in no way benefited thereby in Scotland and Ireland as well as in England. The proposal is, in truth, a specimen of grandmotherly legislation of the worst description, and would impose pecuniary burdens on the careful and vigilant, as well as

on persons who are in no way concerned in the defence of the rights of particular owners.

Under the Fourth part of the Bill, a great change in the law of the land as to succession of Real property was proposed to be effected; for here it was declared that Real property should pass to the executor, and not to the heirs of a person deceased. How, in an ordinary sense, can such a change facilitate the transfer of Real property? It is impossible. True, it might, and would, facilitate the distribution of Real property amongst a greater number of persons than before its becoming law; but, in another and the natural sense, it would increase the difficulties of transfer. Who are the executors? They are the persons appointed to execute the last will of a person leaving Personal property by will. Why, then, not declare that the distinction of Real and Personal estate, as regards succession, shall be abolished? To do this would be the natural and easy way of effecting the object of the Bill. But the mode and language of the Bill are alike obscure and inartistic.

This Part IV. of the Bill is intended to carry further the legislation of 1881 and 1882, as to Real Property. To such an intention I have no objection. But I beg to submit that, in my opinion, the object of the Bill is better expressed in the Memorandum which precedes the Bill, than in the Bill itself. By the words of the Bill, the Personal representatives of an owner of land are to succeed to his Real estate on his dying intestate; and a tenant in tail, who can dis-entail Real estate, shall be tenant in fee simple; and no estate tail is to be created in future. This part of the Bill will not prevent settlements of Real property; and, where necessary, or desirable, settlements will, in future, as at present, effect the same ends as entails. Under the Bill of 1887, entails and the customary right of primogeniture as to land were abolished, and the law of bequest was left untouched.

Such changes as may be made in the law of Real property in England, although they will not have much effect in extinguishing old county and noble families, will yet be, I believe, considerable in the future. They must, in fact, under such a government as ours has become, be founded on a reconciliation of free transfer, and the law of free settlement and bequest, and on the assimilation of the law as to the succession to Real and Personal property. In this aspect of the reform of Real Property Law, it would be well to amend the Thellusson Act, and restrict the right of accumulation during minority, or to pay off debts. The division of property amongst the next-of-kin, or amongst the personal representatives of a person deceased, is a political and not a legal idea; and the vesting of Real rights in the Personal representative in the same way as personalty appears to me to be a necessary corollary. Facilities to extend the ownership of Real property are not necessarily facilities to simplify and cheapen its transfer. But the abolition of Uses would greatly simplify the Transfer of land in England. Trusts of Realty should be allowed to stand on the same basis as Trusts of Personalty. The transfer of land would be facilitated most of all by the payment of *ad valorem* fees to Solicitors on the Transfer of Ownership and on Mortgages and charges of Realty, and by the universal introduction of Short Deeds, and by the compulsory registration of such Deeds on the basis of legal rights by priority of registration.

How very different is the Bill of 1887 from the Act of 1875. How clear, concise and well-arranged the clauses of the Act; and how obscure, slipshod and badly arranged the clauses of the Bill! The bad qualities of the Bill are especially prominent in this fourth branch of it. Who are "the personal representatives from time to time?" Are they the representatives at the death of a real owner, or afterwards? Surely, when the law of succession is to be altered, a Testamentary Disposition should be held to include

all a deceased person's estate, Real and Personal. But still worse, and more unfortunate, a great difficulty will arise as to who the Personal representatives are; and, therefore, who are the persons who can give a proper title to Real estate in case of intestacy. Is the Administrator, in a case of intestacy, to act for all the representatives, or are all the persons who are personal representatives, in other words, the next-of-kin, to be entitled to the legal share to which he is to be entitled, and to grant conveyances, mortgages, charges, and the like? If the former is to act, the matter is not made clear by this Bill. If the latter are to act in their own rights, interminable difficulties and law suits will arise before any person can be safe to act in the sale or mortgage of Real property. In the case of intestacy, the heir-at-law, or one of the next-of-kin, ought to be authorised to make up a title, and be obliged to divide the residue amongst the next-of-kin. Again, in Clause 40, I think the words "or the personal representative may appoint" ought to be deleted; and, at all events, that a Bill should declare its actual intent, without having recourse to a slipshod illustration. It should declare its intent by express words, and not adopt words of popular authors. Who, in case of intestacy as to Real estate, is to take out Letters of Administration? This difficulty does not appear to have occurred to the draftsmen of the Bill; and yet, without a representative in Real property qualified to take up the whole estate for the benefit of the next of kin, great and inextricable confusion will arise. With regard to sub-sec. 5 of clause 42, I am at a loss to understand why a man should not devise the residue of Real estate after satisfying certain specific purposes just as much as, and as he can now do, in Personal estate. Suppose a man does so devise the residue of Real estate, the devisee of Personal estate, or the next-of-kin, of the person deceased, will get land which was never intended to be given to him or them. Surely such a strange restriction

of the rights of property was never intended to be effected by this Bill.

Part V. refers to the discontinuance of the Registers for Deeds; and Part VI. is supplementary, and does not require any particular explanation or criticism in the present Article.

Under Part VI., the Lord Chancellor is to have power to make Rules, and fix charges. As these rules and charges are of the essence of the measure, they should be made part of the Bill, and should not be left to be determined by any official. They should be seen and passed by Parliament. If they are not, what security is there that the transfer of land in England will be facilitated, and the expense of dealings in land made any cheaper than at present?

As the Bill now stands, it is most defective, and would be unworkable in the opinions of most experienced and practical men (*Vide* report of a meeting held at Wakefield, 16th Jan., 1888). The whole question of Land Registration is practically left in the hands of the Lord Chancellor. It is a blank scheme in which the details are to be afterwards inserted. At present, the London Land Registry is maintained, at a national loss of about £4,000 a year, and that sum does not include the late Chief Registrar's sinecure of £2,500 a year. The Chief Registrar was the official Judge of the London Land Registry, and did his work mainly by Deputy. The Parliament of this year will surely never allow such an imperfect Land scheme as that of last year to pass into law? The Bill of last year would have caused great expense, have created a large amount of patronage, and have done little or no good for the objects proposed. For not only should we have had in London a Registrar and Examiners of Title under Lord Westbury's Act of 1862, and the Conveyancing Counsel of the Court of Chancery, we should also, probably, have had in every Registration District a Registrar, and several Examiners of Title and Conveyancing Counsel.



The Bill of 1887 has undergone great and vital changes since its introduction, and is far from being perfect on its own ground or fundamental principle. Numerous amendments were made on it in its course through the House of Lords. For example, the vital principle of compulsory registration in clause 9 was introduced into the Bill by an amendment of Lord Herschell on the 5th of May; and again, the abolition of the customary right of primogeniture as to Real property was introduced on the 11th of the same month. Moreover, the clauses relating to the changes proposed to be made in the law as to the succession of Real property are wholly unconnected with the mode of Transferring or Mortgaging land, and ought to be the subject of a separate Bill altogether. When these matters are again brought before Parliament by way of distinct legislative proposals, I hope that they will form the subject-matter of separate Bills—the one as to Titles, and the other as to Inheritance.

In the Bill of 1887 there are some phrases which are to me not a little puzzling. One is the declaration, Clause 2, that it shall be the duty of certain persons to register. This language is vague, and is evidently taken from some popular author, and inserted in a Clause of the Bill. The language should be that the party shall register, or obtain to be registered. In this instance the meaning is plain; but the workmanship is artistic. Another phrase speaks of the “1st estate of Freehold.” This is ambiguous and should be made more explicit than it is. A freehold may be a life estate, or a fee. Which is here meant? But, perhaps, after all, the Lord Chancellor intends that there shall be no difference between a life estate and a fee. If he does, he will soon discover that most people will find a way of escape from Clause 5 of his Bill, making a life estate equal to a fee. Another such phrase is Registration of Land, when registration of Titles to land is meant. These objections may



be said to be somewhat minutely critical; but they are important. Persons using language in a legal document should use it with accuracy.

I have already stated that the Bill contemplates a compulsory and universal registration of Titles to land. But I venture to predict that the aim of the Bill will never be, and does not deserve to be, fully accomplished. Many persons, from inclination, or negligence, or for economy, will never register their rights to land; and therefore we may ask ourselves What will be the position of such persons? The Bill itself lays down that an unregistered conveyance shall be merely a contract as between the parties. Did the draftsmen of this Bill know the grave changes which they were making under Clause 2 of the Bill? If an unregistered conveyance, which now vests Real estate in a new owner, is to be reduced to the position of a person entitled to enforce a contract, I should like to know what would be the rights of a grantee as against a Tenant of the grantor? Suppose the Tenant refused to pay rent, and refused to remove from the premises, could the grantee have the Tenant removed by ejectment? Under the Judicature Act and Rules the grantee would, no doubt, be in the same position as an assignee, and entitled to the same rights. But suppose an inheritance opens, and no registration takes place, as would often happen, no right, no legal right, would be exercisable till registration. Why should an heir not have a better right to a Real property than a Tenant, and perhaps an intruder, or tenant at will, or squatter? In the case of large properties, the cases supposed would scarcely ever arise. In the case of small properties, they would often arise, and create great and unnecessary hardship. This part of the Bill is rather a disability in the Transfer of Land; and certainly cannot facilitate Land Transfer.

I conclude by re-stating the conclusions at which I have arrived in this Article (I.) as to Land Registration, (II.) as

to Succession of land, and (III.) as to the Land Transfer Bill of 1887.

*I. As to Land Registration.*

1. Registration should be of the right alleged to be held; but, if desired, it might also be of an indefeasible Title of an absolute Fee Simple and relative Charges and Discharges.

2. It should be of all Conveyances, Long Leases, Mortgages and Charges, and of all Releases and Discharges, and should be universal and compulsory.

3. It should be of Deeds, and not of Titles.

4. It should not be based on any official inquiry.

5. It should be based on Central and District Registers.

6. It should be based on the duties of Registrars being Ministerial, and not Judicial.

7. It should not be based on an indemnity fund of any kind, or guarantee of Title.

8. It should be based on the Land Registry paying its way, without any burden on the Imperial Exchequer.

9. Priority of Registration of legal documents should confer priority of legal right.

10. Where rights to land, or Real Incumbrances or boundaries are in dispute, the disputants should go before the ordinary Courts of Law.

11. No Inhibitions should be placed on the Land Registry, unless by order of Court.

12. Owners of Real property, and real rights and obligations, and their Solicitors, ought to be left to inquire into and deal with Real property and Real rights on their own responsibility, and at their own risk, and ought not to be interfered with by the officials of a Land Registry or Land and Estates Court in England.

13. The Register should disclose all the legal rights on or affecting land, and the Registers should be so adapted

as regards size and supervision as not to cause delay, and appropriate Nominal and Geographical Indices should be always available for the purposes of search.

14. Registration should be of the whole or such parts of the Deeds as the parties or their solicitors may wish to be recorded, and the registration shall be in the form of schedules to be provided by the Land Registry, and signed by the grantees or their solicitors.

## *II. As to Succession to Real Estate.*

1. The succession to land should be assimilated to the succession to Personal estate.

2. Real succession, in case of Intestacy, should have a Real representative to act on behalf of all interested, and to have his right so declared by a Court of Law.

3. Real rights, in case of Testacy, should belong to Trustees or Executors.

4. The present periods of prescription are already short enough.

5. The Law of Succession to Real and Personal Property should be codified.

## *III. As to the Land Transfer Bill of 1887.*

1. The Bill should be re-drawn and re-settled, its language made clearer and more concise than at present, and its arrangement should be more comprehensive and orderly.

2. If it should comprehend the changes to be made in regard to Land Registration, and Succession to Realty, the re-arrangement of Clauses is almost indispensable.

3. The General Rules and Scale of Charges should be included in Schedules annexed to the Bill, and the Lord Chancellor should have power to modify them within scope of the provisions of the Bill.

ALEXANDER ROBERTSON.

## • V.—REFORM IN THE LEGAL PROFESSION.

**I**T has been said and, we believe, said truly, that no measure of Law Reform, so deeply affecting the relation of litigants towards the Legal Profession, has been placed before the public since the memorable times of Lord Brougham, as that so forcibly and earnestly advocated by the Solicitor General, in his address to the Law Students' Society at Birmingham, on the 18th of January last. The question, although one which has long been agitated, assumes now an unwonted importance, no less by reason of the position of the speaker who has taken it up than on account of the masterly way in which he has handled it. As might have been expected, Sir Edward Clarke's unselfish plain speaking has brought down upon him the censure of those who, from various causes, are terrified at the prospect of a change which might, by any possibility, disadvantageously affect their own interests. We need hardly wonder then, that from such sources as these, accusations of Socialism, of readiness to knock down the ladder by which he himself ascended, of reducing practice in the Law to a money-grabbing trade, and so on, should be plentifully poured forth, or that it should be suggested, in the same quarters, that the Solicitor General bids fair to destroy, by his proposed Reforms, the character, prestige, and independence of his Order. Charges of this sort can only be taken as betraying irritation and resentment on the part of those who make them. On the other hand, we do not doubt that Sir Edward Clarke will have gained in general estimation by the fearlessness with which he has given expression to his opinions. And it may be remarked that the Public has, through its recognised organ, the Press, unanimously endorsed the views of the Solicitor General, and it seems

impossible to doubt that if public opinion continue to move in the same direction, the task of carrying out some such Reform as he has sketched out, difficult though it be, will not be found to present insurmountable difficulties. We propose here to consider some of the alleged obstacles, and to point out where they appear to be imaginary, and where, though real, they seem to be capable of removal.

Why, it may be asked, should not such a Reform be effected? Because, say the opponents of the change, there should be a fair division of labour and responsibility, and that at present exists. Fair to whom? We fail to see that a division of labour is fair which compels the great majority of the Junior Bar to spend most of their time in enforced idleness, diversified perhaps by precarious spells of "devilling," gratuitously undertaken on behalf of their more fortunate brethren. It is said, on the other hand, that young Solicitors find it difficult to obtain employment, but to this it may be answered that they are not debarred from accepting managing clerkships, and many of them contrive by these modest beginnings to scrape together a private practice, though the process of reasoning by which they are enabled to reconcile their own interests with the faithful discharge of their duty towards their employers requires an effort of casuistry which we are unwilling to make. With regard to responsibility, as matters now stand, there is practically none, because the Solicitor, when the slightest difficulty arises, relieves himself from responsibility by taking Counsel's opinion; whilst Counsel, be he never so ignorant or negligent, is under no responsibility to any person whatsoever, since by an antiquated fiction, common to the Legal and Medical Professions, there is no contract with him for his service. Make him responsible, and then, say the supporters of the *status quo*, you will deprive him of the independence and freedom which raised his profession to its present exalted rank; he would then see his children in

his brief, and so forth. These objections seem to be purely sentimental. Does the General's courage fail him on the battle field, or the sea-captain's presence of mind forsake him in the hour of danger, or does the hand of the signal-man falter because they are one and all amenable to the law? Is the skill of the Surgeon or the judgment of the Physician rendered less effective by the circumstance that his conduct can be called in question before a Civil or Criminal tribunal? Assuredly not; for were it otherwise we should long ago have heard of their complainings. Why, then, should the Barrister be exempt? No rational answer can be given. •

But if he be made responsible for his services, ought he not, on the other hand, to be enabled to recover a pecuniary reward for those services when faithfully rendered? Everyone who has to do with the practice of the law knows that a mass of hopeless litigation is continually being launched by speculative Solicitors on behalf of impecunious clients, upon the principle, as far as Counsel are concerned, of "no cure, no pay." Under present conditions, Counsel, be it said, are never supposed to take a brief without the *honorarium* being paid in advance, and this rule can be, and probably often is, rigidly enforced by men in leading practice when dealing with Solicitors of the class above indicated. But to briefless juniors, the chance of obtaining work and of shewing themselves in Court on any terms, is, we fear it must be confessed, in many instances a temptation too strong to be withstood. Permit members of the Bar to recover their fees, and a crop of fruitless litigation such as now wastes the time of highly-paid and highly-trained functionaries would sensibly diminish.

What is there to prevent the Barrister from seeing his client without the intervention of a Solicitor, just as the Physician sees his patient? Nothing but the Procrustean rigour of an artificial system which seems designed to bring

the Barrister under that "malignant influence," as the late Sir Robert Phillimore called it, the patronage of the Solicitor, or, worse still, the Solicitor's managing clerk, and compel the litigant to pay two sets of costs for work which might in most cases be far more efficiently performed for one. "A change in this direction, even from the vested interest point of view, would prove beneficial, because many a man is deterred or debarred from going to law by the ruinous cost it entails, whereas, if it were thus cheapened and rendered more expeditious, litigation, which shews ominous signs of languishing, would soon become brisker.

It has been urged, however, by some who would seem to trust to the general disinclination of mankind for the pursuit of unendowed research, that our present middle-man system is sanctified by antiquity. Few greater fallacies exist. Just as the practice of Solicitors at the present day extends over a much wider field than in earlier times, encroaching in a great degree on the former exclusive practice of Barristers, so, too, it can be shewn that the exclusion of the client from direct intercourse with his Counsel is an innovation of modern growth. A quotation or two from the learned works of Mr. Serjeant Pulling should entirely dispel the above delusive historical theory.

The Legal Profession in this country has gradually undergone very considerable changes, materially altering the relative provinces of Barristers and Solicitors. It seems clear from the insight into the habits and manners of our forefathers afforded by biographers and dramatists, that the practice formerly prevailed of Barristers being ordinarily resorted to without the intervention of Solicitors. During the last century, the practice was gradually introduced of consulting Solicitors in the first instance.\* In ancient times, the lawyer's work was carried on in a manner very different from that now in vogue. The modern English Bar recognises no

\* Pulling's *Law of Attorneys*. London, 1862, pp. 10 and 11. †

clients but Solicitors. The ancient Order knew not Attorney or Solicitor, or middleman of any kind. The Barrister communicated directly with the suitor who sought his aid. As counsel, as advocate, or merely as draftsman, he was accessible to all.\* Down to the beginning of the Thirteenth Century there was no general right to appear by Attorney or substitute, in an action or suit. Clients or suitors had no alternative but each to select and retain his own counsellor, and throughout legal business always to communicate with and duly instruct him personally. The present Rule of Bar Etiquette has certainly not old observance to recommend it. There is hardly any trace of such an Etiquette before the beginning of the last century. It had no existence in the days of Sir Matthew Hale and Lord Keeper Guildford. The pictures we have of legal life by Wycherley and Sir Richard Steele shew very distinctly Gentlemen of the Long Robe acting as counsel and advocates wholly untrammelled by "instructions" from Attorneys and Solicitors. And Hogarth and other artists of the last century have left us pictures of Barristers in consultation with and in professional attendance on their clients, in all kinds of legal business, without the presence of Solicitors.† Thus, it will be seen, the historical argument falls to the ground.

We may, however, go further, and say that there is no legal impediment to a Barrister acting for a client in the Superior Courts, though by an absurd and unfair anomaly inserted in 9 & 10 Vict., c. 95, s. 91, he is not entitled to appear in County Courts, without an intermediary. Not only do we find numerous instances of such a course being taken by the heads of the Profession recorded in Lord Gampbell's *Lives of the Chief Justices*, but, further, that learned Judge, in 1850, himself decided the point in favour of a Barrister who had long waged war against

\* Pulling's *Order of the Coif*. London, 1884, p. 71.

† Pulling's *Order of the Coif*, pp. 72 and 73.



professional etiquette, after an elaborate and painstaking review of the whole question. Yet so hide-bound are we by mere etiquette that it is more than counsel dare do to follow the law laid down in *Doe dem. Bennett v. Hale*, 15 Q.B. Rep. 171, in Civil cases, whilst in Criminal cases, save in those rare instances where Counsel are appointed by the presiding Judge, the practice is discountenanced and barely tolerated.

It is urged by the antagonists of Fusion, that Solicitors living in the country would not be able to leave their business to appear in the Courts in London. We must confess that we cannot see the force of this argument. Under the existing system, the country Solicitor who is interested in a London cause has to instruct, as his agent, a London Solicitor, who has to brief a London Barrister. But under the proposed system, the country lawyer would directly employ the London lawyer, thereby dispensing with the services of a useless middleman.

A fact which may perhaps more forcibly than any other tell in favour of a change in our present system is the experience in regard to Fusion of our Colonies and Foreign Countries. Statistics and information upon this subject were very carefully collected some three years ago, with the result that, in twenty-four out of twenty-eight Countries, States, or Colonies, the functions of Barrister and Solicitor could be exercised by one and the same person ;\* that in the Countries, States, or Colonies in which the Legal Profession was one body there was a preponderance of

\* The following is a List, which is probably not exhaustive, of the Countries, States, or Colonies, in which the Professions are amalgamated :—Alabama, Bavaria, Canada, California, Colorado, Denmark, German Empire, Holland, Italy, Louisiana, Maryland, Massachusetts, New York, New Zealand, Norway, Pennsylvania, Portugal, Queensland, South Australia, South Carolina, Spain, Texas, Western Australia, Wurtemberg. In the following Countries, States, or Colonies, the Professions are not amalgamated :—Cape of Good Hope, France, New South Wales, Victoria.

opinion, both lay and legal, in favour of maintaining that system, and that, on the one hand, professional incomes were not diminished, whilst, on the other, the expense to suitors was materially decreased by reason of a less outlay being necessary in the conduct of a suit.

Another point raised in the present controversy, though hardly deserving even passing comment, is that the Solicitor is often too closely identified with his client to be able to act as impartially as the Barrister does. To this it may shortly be answered that Baron Grant, Mrs. Weldon, and Mr. Bradlaugh (the last-named of whom proved himself more than a match for a former Solicitor General), not to mention other litigants in person, were apparently none the less successful on account of their direct personal interest in the result. The matter resolves itself into one of ability.

One advantage of the proposed Fusion would be the getting rid of the empty name of the monopoly of the Bar and dispelling the glamour which surrounds it. The title of Barrister at present confers upon its possessor a status which his talents or qualifications may or may not warrant, whereas, when once the two branches of the Profession have been merged, men will be judged more according to their merits. Those who inveigh most vehemently against the proposed change—the older men who cherish the traditions of a bygone Past—are the very men who will be least affected by it, for their position is already assured, and the most competent amongst them will always command lucrative remuneration.

Another consequence which such a change might be expected to effect would probably be hailed by the public with feelings of unmingled satisfaction. That is the sweeping away of a class of men who have done more than anything else to bring the practice of the law into disrepute—the unarticled managing clerks. Taken at their own estimate, they are as apt and able as the very flower of the

Bar. Nestors of legal principle and procedure, they are ever ready to undertake with the greatest assurance and despatch any business whatsoever which is put into their hands. Judged by a more impartial standard, the typical managing clerk, at least on the Common Law side, is an individual whose education is little superior to that of an upper servant, whilst in many cases he is distinctly inferior to him in honesty. There is one quality, however, euphemistically called astuteness, in which he is by no means deficient, and that perhaps accounts very often for the unbounded confidence placed in him by his employers. It is nothing less than a crying scandal, calling for Parliamentary repression, that such mere touts—for they are nothing better—should be allowed to have committed to their charge vast interests involving alike property and reputation, without being subject to the disciplinary jurisdiction which the Courts possess over their masters. These astute unarticled managing clerks conceive it to be their principal duty towards their employers to run up the costs of every case confided to them to the highest possible amount. Upon them devolves the duty of seeing many clients, and as they generally have no more law in their heads than is to be found on the outside of Blackstone's *Commentaries*, they are naturally apt to fall into errors of the grossest description, which have to be corrected at the expense of the unfortunate litigant. Some, less unscrupulous than the rest, take the opinion of Counsel, often of their own choosing, upon every conceivable occasion, which of course means an unnecessary outlay to the suitor, though, curiously enough, a by no means proportionate benefit to the person consulted. They appear to proceed after the following fashion:—The client wishes to know whether an action shall be brought or defended, and, let us assume, the facts have to be laid before Counsel. The managing clerk frames instructions in such a way as to lead one to think that the client has a

good case. Then, upon supposititious facts, pleadings are drawn, numerous summonses for time, for discovery, interrogatories, further and better answers, are taken out with the sole object of putting money into the Solicitor's pocket. Eventually, the cause gets set down for trial, when the Counsel who has been consulted during the preliminary stages is generally employed. No one, however, who has not had the painful experience can realise his dismay and confusion on discovering that not one of the witnesses called by him swears up to the "proofs" furnished him by the Solicitor's managing clerk, while some of them distinctly contradict his "instructions." Of course, the case is lost, and it is mellifluously explained to the Solicitor himself, and to the client, by the real culprit, with manifestations of assumed indignation, that the whole fault rests with Counsel. Who can say how many careers of promise have been wrecked or jeopardised by such nefarious conduct? But when the proposed Fusion comes, it may be hoped that a purifying process will set in, and there will be found, we are inclined to think, not a few members of the Junior Bar who will eagerly embrace the opportunity of changing places with the managing clerks of Solicitors, at their present rate of remuneration.

There are, no doubt, many other points which might be urged in favour of Sir Edward Clarke's proposal, but enough has probably been said to support the view that its acceptance would be of great public advantage. Unfortunately, some members of the Legal Profession, apparently regarding only what they believe to be their own interest, shew themselves bitterly hostile to any alteration of things as they now are, even when the very harmless suggestion is made that the efficiency of the Inns of Court as Educational Establishments leaves something to be desired. To taunt those who have simply expressed a desire for the amelioration of Legal education, with bringing groundless

charges against the Benchers of the Inns of Court, indicates the prevalence of a spirit of prejudice and partisanship proof against all argument.

Those, however, whose minds are still open to conviction, may be glad to be reminded that the Solicitor General's opinion on Legal Education has been shared by two, if not three, former Lord Chancellors. We refer to Lord Selborne, who introduced into Parliament Bills embodying his schemes of reform, and the late Lords Hatherley and Cairns. In conclusion, to the apathy of the many, supplemented by the hostility of the few, is due, in part, the continuance of our present cumbrous and expensive Professional organisation, but a still more efficient cause of its retention may be found in the want of systematic and thorough Legal education, such as could be adequately supplied by the institution, pleaded for by the Solicitor General, of a Legal University.

[*Note.*—We gladly give space to an earnest advocate of the schemes of Reform set forth by the Solicitor General, without thereby necessarily expressing our agreement in details, or any opinion on the questions at issue beyond the point that there is a case for Reform. How the Reform may best be carried out, is the problem the solution of which we desire to further. That the establishment of a so-called Legal University would help it forward, is an opinion not at present shared by us, though we have always urged the necessity for systematic and thorough Legal Education. But it appears to us that, historically, a Legal University is an anomaly, just as much as a Medical or a Theological University, because, historically, a University is a *Studium Generale*, and we do not desire to see Law divorced from Arts in the scheme of an English gentleman's education for the Legal Profession of the Future.—ED.]

## Quarterly Notes.

### Staple Inn and the Inns of Chancery.

The history of Staple Inn, the old home of the "Mayor and Constables of the Staple of England," incorporated *t.* Edw. II., and the subsequent home of a certain amount of Legal learning as an Inn of Chancery, forms the very suitable subject of the Presidential Address, delivered Nov., 1887, before the assembled body of its present tenants, the Institute of Actuaries, by Mr. Archibald Day, President, and published in Vol. XXVII., Pt. i., of the *Journal* of the Institute (C. & E. Layton) for January. With the fortunes of the original Staple merchants, we are not here concerned, but there is much of considerable interest to us in the main body of Mr. Day's Address, where he deals with the varying fortunes of Staple Inn as one of the Inns of Chancery. The preliminary question, what is (or rather, we might say, what was) an Inn of Chancery, is itself not an easy one to answer. Mr. Day quotes different accounts and opinions, from sources old and new, the general tendency of which is at least in harmony with the view that the little which the Inns of Chancery ever did in the direction of Legal education had dwindled down to the possession of a few books, and the eating of a few dinners, long before the Royal Commission of 1854 was appointed.

On the question which meets us *in limine*, What is an Inn of Chancery? the President of the Institute of Actuaries quotes the double reply given by the present Assistant Registrar of Friendly Societies, Mr. E. W. Brabrook, F.S.A., in a Paper read on Jan. 1, 1887, before the Lewisham Antiquarian Society assembled for the nonce in

the Hall of Staple Inn. Mr. Brabrook's double reply is, 1. According to its original constitution, part of a Law University; 2. According to its more modern condition, a Voluntary Club, without functions or responsibility. We may perhaps take some exception to this reply, or to part of it. The alleged Law University, it appears to us, has never existed in fact, although no doubt a certain amount of Legal education was for some centuries given in both the Inns of Court and Inns of Chancery. Mr. Brabrook says that the men of Law were compelled by the hostility of the men of Holy Church to set up for themselves, and therefore rented from Prelates and Peers, or obtained from the Crown, the houses which they made into the Houses of Court, around which gradually grew up the Hostels of Chancery, like the Halls around the Colleges of the ancient Universities.

But the separation of the study of the Common Law from the ancient Universities does not require so violent a breach as Mr. Brabrook supposes, nor do we think that any such distinct breach ever formally took place. What no doubt did happen was that the place, namely London, where the King's Courts came to be permanently fixed, naturally attracted to itself alike the clerks who had to study the forms of Writs in Chancery, and so led to the foundation of the Inns of Chancery, and the students who aspired to become *apprenticii*, and perchance in time, *servientes, ad legem*, practising in the Courts of Common Law, and so led to the foundation of the Inns or Houses of Court. Solicitors in Chancery naturally attached themselves to the Inns or Hostels of Chancery, and thus it might have been possible, had the scheme of a Legal University been carried out in our day, to have said that the Inns of Chancery should be restored to the use and habitation of the modern Solicitors of the Supreme Court and of the clerks under articles to them. But no sufficient traces of a continuous

Legal Education at the Inns of Chancery could be found by the Commissioners, and the idea has, we suppose, as far at least as those Inns are concerned, been entirely abandoned.

A certain likeness, not unnatural when the history of mediæval education is considered, may be traced between the *Trivium* and *Quadrivium* of the Ancient Universities, and the system which appears to have obtained during the most flourishing period of Legal Education at the Inns of Court and Chancery. This likeness does not seem to have arrested the attention of either the President of the Institute of Actuaries or the Assistant Registrar of Friendly Societies. Yet it is only what we should have been led to expect as the practically inevitable result of the general influence of the University system, which was at its height, as regards the numbers of students attracted to the various Schools, just about the period of the establishment of the two sets of Inns outside the precincts of any existing University.

Whether a Legal University could in these days be galvanised into life, and whether if it were to be so brought into existence it would be of any real service to the Legal Profession, are questions with which the President of the Institute of Actuaries was not concerned.

But Staple Inn, as one of the old Inns of Chancery, must always have an interest for this *Review*, and we are glad to know that the *Stapulia* of the Prince of Purpoole of the Revels of 1594, that Norfolk gentleman of parts, Henry Helmes,—the sometime Inn of the “honest” Judge, Sir Richard Hutton, and of Mansfield’s sturdy opponent, Sir Joseph Yates,—should, in these latter days, have become once more a seat of intellectual training. We are still more glad to know that it already claims a number of Students and Associates larger than that of the roll of Staple Inn in the days when its numbers were greater than those of any of the other Inns of Chancery. Whether or not the instruc-



tion now given in the Hall of Staple Inn should be held to fall within the technical meaning of the term "Education," for the purpose of exempting the Institute of Actuaries from liability to "Corporation duty," this at least may be said of it, that it unquestionably involves an intellectual training such as has not been given within the precincts of the Inn for several centuries. We therefore lay down Mr. Day's interesting Address with all good wishes for the Institute now so worthily occupying the quaint old Hall of the Principal, Antients, and Juniors of the Hon. Society of Staple Inn, and we say to the Institute and its President, *Floreat Stapulia!*

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### **The Co-operative Movement in Industry and in Politics.**

An interesting Paper, recently read before the Royal Statistical Society by Mr. Benjamin Jones, on the "Progress, Organisation, and Aims of Working Class Co-operators," suggests some thoughts which it seems worth while to make note of in this place.

The historical account given by Mr. Jones of the Progress of the Co-operative Movement was both interesting and valuable, as a contribution to the Story of our National Progress in Legislation on Industrial questions.

Thus it appears that from 1855 to 1862, the Registrar of Industrial Societies refused to certify those Societies which devoted a portion of their profits to Educational work, on the ground that it was "contrary to the law." This naturally rather stopped a branch of the movement to which, nevertheless, its promoters always, and rightly, attached great importance. The Registrar, of course, had no option in the matter of his action, allowing his construction to have been correct. Fortunately, however, some of the Co-operative Societies refused to be so thwarted, and notably the Rochdale Pioneers, who had always kept

the Educational question to the front. It would be difficult to conceive of a greater obstruction to national progress than to throw hindrances in the way of the spread of Education, especially where, as in the case under consideration, it is voluntarily spread, with practical objects in view, and by practical men. This is a very different thing from the kind of article which sometimes passes for Education where the money of the Ratepayers supports it. How much is being done by Co-operative Societies in the way of Education, now that the vexatious restrictions on that work have been removed, may be gathered from the Statistics supplied by Mr. Jones as to the methods employed and the money spent thereon. In 1882, we learn, 120 Societies had news-rooms, 100 had libraries, 34 had Courses of Lectures, 9 had Endowed Scholarships, 8 had Science Classes, and 9 had discussion rooms.

In connection with the Courses of Lectures, it is interesting to note that the Co-operative Societies are now, as far as possible, working in harmony with the Organisation for the Extension of University Teaching, and where there are not sufficient local funds as yet to defray the expenses of a Lecturer, they are obtaining the gratuitous services of able Members of our Universities. In connection with the Scholarships, we are glad to note that the two great English Universities are commemorating the services rendered to the cause of the Co-operative Movement by Thomas Hughes and Edward Vansittart Neale, Oxford having already its Hughes Scholarship.

The Statistics of the amounts devoted to Educational purposes by the Co-operative Societies, though admittedly incomplete, as the amounts of the grants, Mr. Jones warned his hearers, do not represent all the moneys so expended, are amply adequate to proving the Co-operators in earnest on this vitally important question. In 1878 these grants amounted to £10,658. In 1886 this total

was more than doubled the sums voted having risen to an aggregate of £200,000.

It is not one of the least interesting features in the Teaching supported by the Co-operative Societies under their Educational system, that whereas at first it was mainly Elementary, to supply the deficiencies in the then existing National system or rather want of system, the conviction, Mr. Jones says, has of late years been growing that they cannot do better than spread an accurate knowledge of Economics. Such a knowledge, spread abroad among the Industrial Classes over the surface of the whole of the United Kingdom, must tend to promote the future well-being of the Nation.

Thrift is, of course, largely promoted by these Societies. In England, as in Italy, one of the forms of Thrift so promoted has been the foundation of Co-operative Savings Banks.

In Italy, it would appear, from Statistics furnished by Sig. Mantica, of Udine, in his valuable works on *La Previdenza nella Provincia di Udine* (Udine, 1885 and 1886), to which we hope to refer again, that the Co-operative Banks have not been able to stand against the competition of the more recent institution of Post Office Savings Banks. Probably this applies also to England. From Mr. Jones's Statistics, at any rate, it would seem that the number of Co-operative Banks started in 1883 and 1884 was eleven, as against the same number in 1873, and twelve in 1874, thus appearing to shew a stationary position, with a downward tendency, especially when we consider that the highest point between 1859 (the date of the opening of the first such Bank at Oldham) and 1884, was reached in 1878, the number recorded under which is seventeen. We should have thought that this was hardly to be considered as progress, except in the sense of progressing by retrogression.

Some curious *minutiae* of the ~~various~~ ~~obstacles~~ ~~placed~~ in the way of the Co-operative Movement. What is now, happily, a past state of the Law, is here recording here for their apparent eccentricity or oddity. There may, of course, have existed deep reasons of State for them which are not visible on the surface. The Leeds Co-operative Society had an accumulation of offal. Its own members did not want to buy that particular commodity. But, under the then Law of Friendly Societies, such a Society might not sell to non-members. The Leeds Society decided, as Mr. Jones said, "to break the law and risk the consequences," the alternative being to "stop their business." By recent and more enlightened Legislation, the sphere of action of Co-operative Societies has been greatly increased. The several Industrial Societies Acts of 1852, 1862, and 1871, following each other at almost regular intervals of a decade, have first improved their position, then given them a corporate existence, and lastly, enabled them to deal in land, thus, as Mr. Jones remarked, almost completing the circle of objects for which societies may be formed.

This is a record of substantial progress in Industrial Legislation, and so far we have nothing to express but our general satisfaction with such progress. It is when we come to the last point touched upon—very lightly, it is true—by Mr. Jones that we feel some doubt as to the Future of the Co-operative Movement. So far we have been dealing with the expansion of Industry, and applauding the spread of sound Education along with Industry.

But the statement of the "aims" of Working Class Co-operators, as made on their behalf by one well qualified to make it, seems, at least, to include a Constitutional *Coup d'Etat* rather than a Constitutional Reform. And these aims are no parasite growth of modern times; they were put forward by one of the earliest of the Co-operative Societies.

"This little body of Co-operators," as Mr. Jones is rather fond of calling them (as though a distinct species of the genus *Human*), placed among their declared objects — "as soon as practicable, this Society shall proceed to arrange the powers of production, distribution, education, and government."

Surely, we have here something in the style of that famous enunciation of Tooley Street, "We, the people of England." That a small Industrial Co-operative Society should take upon itself, "as soon as practicable," to "arrange" the powers above enumerated, seems only saved from a ludicrous aspect by the sincerity which no doubt dictated the declaration. But what does it mean? We admit with satisfaction that Mr. Jones, speaking for the "Co-operators," said that "they do not believe in grand schemes of wholesale demolition, with a view to equally grand methods of reconstruction." What, then, do they believe in? Yet again shall Mr. Jones comfort us by his reassuring words, "They think that success lies in patient and steady, if slow, efforts at amendment and reform." Excellent words, and words which must always find an echo in a *Review* which, like our own, has, as the *Law Review*, been from the first devoted to the promotion of Law Amendment and Law Reform. But we want to know how the "Co-operators" propose to "arrange the powers of government," presumably on Co-operative principles, without the arrangement proving, either in its own nature, or in the means employed to produce it, a "grand scheme of wholesale demolition." And could Mr. Jones, or anybody, guarantee us a "grand reconstruction?" We have seen the Co-operative Movement in Industry. What are we to see of it in Politics? And how do "Co-operators" propose to "arrange the powers of government?" These questions, we think, need an answer.

**Deferred Payment of Rent under the Agricultural Holdings Act, 1883, sec. 44.**

There is a curious point in connection with the Agricultural Holdings Act of 1883 which does not seem to have occurred to Messrs. Oldham and Foster, whose excellent work on the *Law of Distress* we noticed in a recent issue; nor, so far as we are aware, has it ever been decided by the Courts. The proviso of section 44 deals with a deferred payment of rent according to the custom of the estate, where the payment of the rent has been allowed to be deferred until the expiration of a quarter of a year, or half a year, after the date at which such rent legally became due: "for the purpose of the section the rent shall be deemed to have become due at the expiration of such quarter or half-year as aforesaid." Now, supposing that rent day on an estate is, as it very frequently is, about a week or ten days *after* the quarter day succeeding that on which the rent legally became due, does the proviso apply? It is precise in its terms, and those terms only refer to delays of a quarter or half a year. Why was the "quarter" put in? The greater usually includes the less. It may be the result of an amendment proposed by some irresponsible member during the small hours of the morning. There ought really to be a legal adviser specially appointed, whose duty it should be to point out the probable results of adopting amendments proposed by reckless "members for things in general." We await the interpretation of this fresh instance of eccentric legislation with some curiosity.

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**The Scottish Secretary.**

We have much pleasure in drawing attention to Mr. Smith's handy and useful book (*The Secretary for Scotland, being a statement of the Powers and Duties of the new Scottish Office, with a Short Historical Introduction.* By WILLIAM C. SMITH, LL.B., Advocate. William Blackwood and

Sons. Edinburgh and London. 1885), which contains a well-arranged Digest, down to its publication, of all the Statutes which are administered by the Secretary for Scotland and his subordinate officials. The Historical Introduction is also a brief and interesting epitome of the chief events regarding the administration of Scotch affairs, from the Union between England and Scotland. It shews how the office of Scotch Secretary was practically abolished about the year 1745 ; and how, in 1804, the Lord Advocate of Scotland became the virtual Home Secretary, Privy Council, and Lord-Lieutenant of Scotland. It also shews how, in 1851 and 1854, dissatisfaction arose in Scotland as to the administrative usurpations of the Lord Advocate, and how it culminated in an Address in 1869 "for the appointment of a Chief Secretary for Scotland, with functions similar to those exercised by the Irish Secretary." Before anything was done by any Government, nearly 10 years had to elapse. At length, in 1878, the Conservative Home Secretary introduced a Bill for the creation of an additional Under-Secretary for Home Affairs ; but his Bill, in consequence of the jarring discords which arose, was never proceeded with. Then, as a temporary expedient, Lord Rosebery, with a special charge of Scotch business, acted as Under-Secretary at the Home Office. But his lordship found his position intolerable, and very soon resigned it. Subsequently, in 1883, the Liberal Home Secretary succeeded in passing through the House of Commons a Bill for the creation of a Local Government for Scotland. This Bill was totally inadequate to deal with the grievances which existed, and it was rejected by the House of Lords on the ground that there was not sufficient time of the Parliamentary Session left for its adequate discussion. On the 16th of January, 1884, a great meeting of all classes, Churches and politics, was held in Edinburgh, under the presidency of Lord Lothian, the present Secretary for Scotland. This meeting unanimously



demanding the appointment of a Secretary of State for Scotland. In the following May, Lord Dalhousie introduced in the House of Lords a Bill for the appointment of a Secretary—but not of State—for Scotland. This Bill was the subject of much discussion in the House of Lords as to the reservation of the administration of Law and Justice, and as to the extension of its provisions to educational endowments. But, in consequence of the conflict which arose between the two Houses of Parliament on the Franchise and Re-distribution Bills, it was abandoned after the second reading in the House of Lords. In 1885, a new Bill was introduced by Lord Rosebery in the House of Lords. After much discussion in both Houses of Parliament, and after a compromise was arranged on the subject of the control over the Scotch Education Department, this Bill received the Royal Assent on the 14th of August, 1885. A long and pertinacious agitation was thus, so far, crowned with success; and a foundation laid for a superstructure which should be adequate to the population, wealth, and commercial and agricultural importance of Scotland. The Scotch Secretary is now the official head of all the Scotch Administrative Departments of State. He is the dispenser of nearly all the civil and judicial State patronage in Scotland, and has quite recently been endowed with the power of advising the Sovereign in regard to the exercise of the Royal prerogative of mercy. “What shape,” says Mr. Smith, “the Scottish Department will ultimately take it may be difficult at present to foresee,” and wisely advises caution against too great haste, and urges prudence in the extension and development of the functions of the new Department. His motto on this matter is “*Festina lente.*” He concludes his Historical introduction with the hope “that this great reform will be presided over by a Secretary of patriotic sympathy and political courage.” We venture to assert that his hope has not been disappointed in any of



the Right Honourable gentlemen who have held the Office of Secretary for Scotland since the Act of 1884 was passed into law. We should have been glad if we could have entered here upon a discussion of some of the interesting problems which Mr. Smith's useful volume naturally suggests. For example, we could have wished for leisure to discuss the problems involved in Parliamentary obstruction in the House of Commons, and the consequent paralysis of necessary legislation, and of a wise and prudent supervision and control of the Administrations of the day. There is, too, the question of the desirability of establishing Grand Committees and Grand National Committees of the House of Commons, and abolishing or circumscribing the useless, and outrageously wasteful Committees of the whole House of Commons in the discussion of Public Bills. Yet further, there is the consideration of the necessity, or the reverse, of Provincial Councils, National Councils, or National Parliaments for England, Scotland, and Ireland; and, lastly, the extension of Urban Municipal and Administrative Government to the counties of England, Scotland and Ireland. But these great questions, and others of a cognate kind must be left for the present undiscussed, and must be relegated to a more convenient time and place than the present. Still we desire to express our hope, and to express it as something more than a pious opinion, that the forthcoming County Local Government Bills will make a clean sweep of the numerous local Boards in one and the same locality, and will consolidate all the local Boards under one body of Electors and under one Board for every locality adopted by the Government as the unit of local Government, and will place the local County Government in England, Scotland and Ireland on a thoroughly popular basis, and will make no essential differences in the treatment of England, Scotland and Ireland. Numerous local authorities cause great supineness, friction, and expense. But Judicial Administration should not fall under the cognisance of elected Local Authorities

appointed by the Local Ratepayers. County administration in Scotland has been pure, simple, and cheap. But the *fiat* of the people has gone forth that County administration shall not be carried on exclusively by the Nominees of the Crown, or the Representatives of the great landlords. There would, indeed, be wisdom in retaining, at least for a time, a certain number of *ex officio* members as present members of the County administration on the new Parish and County Boards to be established. A good model of what we mean is to be found in the Roads and Bridges Act, 1878, for Scotland, alike as to areas, authorities and rates. We should advance slowly, and by steps, in the solution of this great matter, and should not recklessly, or for theoretical symmetry, overthrow old land-marks and habits. Local Administration is not inferior in importance to National or Imperial Government, and touches the immediate interests and daily lives of the people far more than the latter does. In order to be sure of good, *i.e.*, cheap and efficient Local Administration, we would sacrifice a good deal of abstract or theoretical perfection. No doubt, in the course of time, we must come to the Parliamentary Electors, pure and simple, as the Electors for Local County Government. In Scotland, there are usually six different bodies engaged in discharging the functions of Local Government in the rural districts. These are the Commissioners of Supply, the Heritors, the Road Trustees, the Board of Lunacy, the Parochial Board, and the School Board. We think that the duties of all these should, as far as possible, be combined under one Rural Board, with power to collect all local assessments in a simple consolidated rate. While there is no necessity for modifying our opinion as to a consolidated rate, we would not dogmatise on an absolute combination of all Police, Sanitary, Poor Law and Educational matters under one Rural Board. If the combination were effected, committees would require to be formed for the different branches, and,

perhaps, essentially, for proper working and efficiency, for Poor Law and for Education. These matters of Poor Law and Education might, therefore, be separated from the ordinary Rural District Authorities. But we wish to urge that the Representatives in the management of County Boards must derive their effective force and power of administration and taxation from the Ratepayers as Electors. Our Local Government of the future must be Democratic. We should break up as little as possible of the existing machinery, and utilise it as much as we can. We should abolish the cumulative voting at present existing for School Boards and for Parochial or Poor Law Boards. A Parish Board, or United Parish Board, should be established in all counties for all Parishes or United Parishes of above 5,000 or 10,000 inhabitants, and the County Board should perform all the duties of Local Administration for all Parishes, Places, or Districts in the County with less inhabitants than 5,000 or 10,000. Chief Justice Coke says that the most ancient division in England was the Township. Very probably the same statement could be made about Scotland and Ireland. However this may be, a host of Rural Authorities ought not to be established in sparsely inhabited districts. We do not believe that County Boards, as proposed by some, for superintendence and control, and even for legislation, public and private, would work smoothly, efficiently, or satisfactorily. We prefer responsible National Executive officers in Edinburgh ; and a National Council in Edinburgh for Scotch National affairs. In England, Local Government has tended to accumulate around the Poor Law Authorities as centres of Local Government, whereas, in Scotland, it has tended around the Police Commission. The licensing of Public Houses in England, Scotland, and Ireland, should be wholly under the control of the local authorities ; and the monies to be derived from such licensing should belong to the local authorities, and be available for local purposes. There should be a State department for Local

Government in Edinburgh for Scotland, as well as for England and Ireland in London and Dublin. The Scotch Local Government department should have the supervision and control of all Local Government authorities, Urban and Rural, in Scotland, and especially of their borrowing powers and extraordinary expenditure. Unless something is done to control the rapidly-increasing accumulation of Local Debts, the consequences will be serious to future generations of Ratepayers. Imperial contributions towards local taxation and Imperial checks on local expenditure are not sufficient safeguards against wasteful and dangerous extravagance. In enlarging our system of Local Government, we should aim at getting the best men possible as administrators, and the best and the most economical mode of administration. Our present system, or rather want of system, of Local Government has grown up bit by bit, and legislation in regard to it has made matters worse by being introduced piecemeal. It has often sprung from the necessary interference of the Central with the Local authorities. It must now, or soon, give way to a more uniform and popular system based on combination of rates, popular election as a general rule, one disbursement, one control, one audit, for the same period of time and the same unit of place. Whatever may be the ultimate solution of County Local Government in Scotland, we sincerely hope that no Government, whether Liberal or Conservative, will adopt Mr. R. Vary Campbell's scheme as to the functions of a General County Convention similar to the antiquated and practically worn-out Convention of the Royal Burghs of Scotland. County Local Government should be purely Administrative and neither Judicial nor Legislative. If the Parliament at Westminster cannot perform its duties to the people of England, Scotland and Ireland, and of the rest of the Empire, the Nation may eventually find it necessary to adopt a system of Local self-government for England, Scotland and Ireland, under the supervision and control of the Imperial Parliament, or Great Council of

the Empire, to deal with the general interests which are common to Great Britain and Ireland and to India and the British colonies, dependencies, and possessions. We are glad to know that Mr. Smith's anticipations as to the Institution of Local Inquiries on all Scotch Private Bills are not unlikely to be realised at no distant period.

## Reviews.

*Two Lectures on the Science and Study of Law and the Science and Study of Politics,\* delivered at Dundee, in January, 1887, together with a General Outline of a Scheme for Imperial and National Constitutions for Great Britain and Ireland, and for England, Scotland, and Ireland.* By ALEXANDER ROBERTSON, M.A., Barrister-at-Law. Dundee: Winter, Duncan, and Co. 1888.

Our old and valued contributor, Mr. Alexander Robertson, has just issued a Pamphlet on the related Sciences of Jurisprudence and Politics, to which we desire to draw special attention on account of the amount of matter which it contains bearing on some of the chief questions of the day, and on studies which we have always advocated as closely related.

In delivering these Lectures at the Albert Institute, Dundee, in the course of January of last year, Mr. Robertson's object was, generally, to set forth the nature and the importance of Law and Politics as Sciences, and, specially, to advocate the foundation of a Chair of Commercial Law, with relative Studentships, in the recently founded University College, Dundee. On both these points we are entirely at one with the learned lecturer, and it will certainly not be for want of plain speaking and earnest pleading on his part, if his fellow-townsmen are not soon gifted with so useful a *Cathedra* in their College. Its advantages, especially in such a busy hive of Commerce as Dundee, are obvious; its absence from the foundation leaves a blank for the energising Dundee folk to fill, and the sooner the better, and the more fully, we believe, will the founder's desires be carried out.

The principal statements of Authors old and new, respecting Law and Politics as Sciences, are brought together in the two Lectures, and the Author's own views on some of the questions which still divide men into different camps in the field of Science

are stated, where it seemed necessary for him to deliver his soul by speaking.

In touching upon the Law of Nature and Positive Law, Mr. Robertson sees no absolute reason in the fact that by the Law Natural all children have an equal right to a share in the property of their father, of whatsoever kind, against the other fact that Positive Law, in England, leaves him an unlimited, in Scotland a limited, power of disposition by Testament. Nor does he see any real antinomy in the case of entails.

In attributing the *esprit de clocher* to Village life, Mr. Robertson is no doubt right, to a very considerable extent. But in his apparent denial of its persistency, he is surely at variance alike with himself and with facts which he plainly acknowledges. There are, indeed, few features of Archaic Society which have so strongly impressed Western Jurists as the persistency of the life of the Aryan Village Community. Doubtless, the bond of cohesion is limited in its area, but within that area it is very strong. Doubtless, to build up a State from an aggregation of Village Communities would be a task something like weaving ropes of sand. The Indian Village Communities are in the nature of *Imperia in Imperio* rather than of factors in the constitution of the Indian Empire, whether governed by Hindoo, Moslem, or Christian. They are survivals of a previous state of Society to that which came to know of Maharajahs and Emperors and Empresses. Each Village Community is, in fact, a little State by itself, as is the House Community of the Southern Slav, and the Village Chief, or the House Father, is the Head of the Archaic Society shut up within the Village Community, or House Community, as the case may be.

Patriotism exists in but a low degree, Mr. Robertson objects to Village life, meaning the life of the Village Community. It would be truer to say that the Patriotism of the Village Community, or the House Community, is necessarily limited to the Community. Hence it follows that in the modern sense of the word, Patriotism does not exist in that stage of Society. Whether Family Life, as a previous stage to Village Life, was, as Mr. Robertson takes it to have been, the first stage in Archaic Society, is a point much in dispute at the present day. The view adopted by Mr. Robertson is that of Sir Henry Sumner Maine, M. Fustel de Coulanges, and other distinguished writers. But the counter-theory of the Primal Horde—a very loosely organised, promiscuous, sort of Community, as McLennan and others describe it—is held by a perhaps larger school of

modern writers, though they are not, we think, so often Jurists.

To the Jurist, imbued with the principles of Roman Law, the Family is necessarily the basis of the Social fabric, but this Family is itself a creation of the Law, embracing all within the power of the *Paterfamilias*. In other words, it is an artificial, not a purely natural, Family. It is the Family in its Legal aspect. Hence, what might otherwise appear to be antinomies are simply corollaries to the Roman view of the Family, and stand or fall with that view.

One of the most important features in Mr. Robertson's *Lectures* is the Draft Scheme of an Imperial Constitution and of separate National Constitutions for the separate portions of the British Empire and its Colonies. This Draft Constitution is most closely related to the Lecture on Politics, though, of course, it might be treated as a sub-division, viz., Constitutional Law, of the Lecture on Law. It might also, without disadvantage, be treated separately, and this last is the course which we on the whole find it necessary to adopt ourselves, from considerations of space, as well as by reason of the great intrinsic importance of the subject.

The Draft is put forth with much diffidence on the part of its author, but we quite think that he was right in issuing it as a companion to his *Lectures on the Science and Study of Law and the Science and Study of Politics*, as their text forms, as it were, a key to the interpretation of his Draft Constitution. It is intended to be read in a scientific, not a party, spirit, and it is expressly issued with a view to criticism, in the belief that some measure of this character is called for by the times, and that a Draft outline such as the present, however open to amendment in detail, as the author is fully conscious that it must be, serves a useful purpose if it gives rise to discussion, and to even a theoretical acceptance as a useful basis for discussion of the principles involved. As we hope to consider on another occasion some of the interesting Constitutional points raised by Mr. Robertson's scheme, we will not do more now than express our thanks to him for having thus given us so much valuable matter compressed into so small a space, and assure him that where we may agree, we shall agree with pleasure, where we may differ, we shall differ with regret, and only on strong conviction.

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*The Law relating to Building, Building Leases, and Building Contracts.*  
By ALFRED EMDEN, Barrister-at-Law. Stevens & Haynes. 1885.

This book is well written, and cannot fail to be of use in a



country like ours, where, according to the census of 1871, there were 4,259,117 inhabited houses, and, according to the census of 1881, upwards of 419,600 inhabited houses within the limits of the Metropolis Local Management Act alone. Mr. Emden's goodly tome contains 860 pages of well-printed and well-digested matter, and a glossary of architectural and building terms gives a finishing touch to it as a work of practical utility.

*A Manual of Common Law.* By JOSIAH W. SMITH, Esq., B.C.L., Q.C. Edited by J. TRUSTRAM, Esq. Tenth Edition. Stevens & Sons. 1887.

We are not surprised to see that this well-known book has reached its tenth edition. The style is undoubtedly easier than that of many of its contemporaries. But in order to make a book of real practical value, whether to the student or the practitioner, it is necessary that there should be something more than mere simplicity of style. That the *Manual* before us contains adequate information to be of material help to a practitioner, we are unable to see. For a practising barrister does not require to know the merest outline of the different kinds of Contract; nor does he want to learn the ingredients which constitute it. All this he knows. The only object with which he opens a book is to find important cases cited, and all the points decided therein fully explained. In this respect, Mr. Smith's *Manual* cannot be said to succeed. Nor can we unreservedly recommend it to the student, for several good reasons. In the first place, we do not altogether approve of the arrangement of the subject; the great care which the author has undoubtedly taken has rendered the classification too novel, and, therefore, confusing. Nor is this all. The *Manual* is wanting in some of the chief essentials of success in students' books. The learned author devotes himself exclusively to as brief a statement as possible of the existing law, and omits all references to that which was previously in force. This is a fault which greatly disfigures the book, and it is one, we apprehend, which is calculated to narrow the limits of its utility. A short history of the gradual growth of law is indispensable in the case of a book designed, as it were, to be a copious preface to elaborate Treatises on the subject.

A close examination, moreover, of the work itself seems to shew that in consequence of each paragraph having been compressed into the shortest possible compass, not only the details



but some of the most important points have sometimes been omitted. For example, we find it laid down, in paragraph 252, that time is of the essence of contract only when a date is fixed for the completion of the contract either (1) at the time of making it, or (2) at a subsequent stage by notice. Here the author appears to have entirely overlooked that time is of the essence of contract, even in the absence of any such stipulation, if the nature of the subject matter is such as will suffer in value by unreasonable delay in fulfilling the contract. Fluctuating values, and going concerns, are among the instances which may be cited. Again, in paragraph 400, we find it stated that a father may be compelled to provide for his legitimate children who are unable, through disease, infancy or accident, to support themselves. The statement, though perfectly accurate, is somewhat misleading; for, at Common Law, a father is no more liable to support his children than a stranger. His liability arises under Statute Law, of which no mention has been made.

Paragraph 1,224 deals but imperfectly with the liability of an innkeeper. It says that "If an innkeeper takes charge of goods for a person who is not lodging at the inn at all, or is lodging there as a lodger and not as a traveller and guest, the innkeeper is only responsible, in the first case as a bailee, and in the second case as a lodging-house keeper." This passage, correct enough in its way, is confusing in that it does not distinguish between a lodger and a guest, which two expressions are often used as synonymous. Under what circumstances a person is lodging as a lodger and not as a guest ought to have been clearly shown by examples.

An innkeeper, according to *Addison*, is exonerated from his liabilities as such in case of loss of goods, under the following circumstances:—(1.) If a person leaves his goods with the innkeeper, but does not stop at the inn; (2.) If the innkeeper invites a friend to supper who stops at the inn for the night; (3.) If a person takes rooms for a fixed period and makes a special arrangement as to his board and lodging, or has his meals elsewhere. The reason why the innkeeper is not responsible to his guest as an innkeeper in the first two cases is obvious: because the person does not go there as a traveller. The same principle will also apply to the third case; for if a man engages rooms at an inn for any length of time and makes terms other than those which are applicable to an ordinary traveller, or systematically has his meals elsewhere, he is not a traveller in the strict meaning of the word.

# THE LAW MAGAZINE AND REVIEW.

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## I.—INTERNATIONAL PROTECTION OF MERCHANDISE MARKS:—FRANCE AND THE UNITED KINGDOM.

THE fraudulent marking of goods is a subject which has been exercising legislators in France and in England for some time past, and it was the chief question discussed at the meeting of the Industrial Property Conference at Rome last spring.

The subject took an acute form, so to speak, owing to recent efforts of the Cutlers' Company to protect themselves through the Diplomatic channel against the fraudulent use on the Continent of the mark "Sheffield."

Much cutlery so branded, or branded with a name resembling Sheffield (such as Schemfield), is manufactured, it appears, in Germany, and sent to France, where it is passed off as Sheffield ware.

Frauds of the same kind are perpetrated by some French makers. Orders are given to these not very scrupulous manufacturers to mark "Sheffield" on the goods. These orders are carried out as a matter of course, and often without particular pains to conceal the fraud.

The Cutlers' Company called attention to these malpractices, in 1883, by a memorial to Earl Granville, in which they prayed Her Majesty's Government to bring their complaint under the notice of the German authorities.

Memoranda followed on the part of the British Ambassador at Berlin and the Cutlers' Company, the former suggesting

that, as the question more especially referred to the increasing introduction into France of German wares marked "Sheffield," the Company might not improbably be in a position to obtain redress in France.

Lord E. Fitzmaurice wrote further, on the 22nd December, 1883, "that Earl Granville had received, through Her Majesty's Ambassador at Berlin, a copy of a communication from the German Minister for Foreign Affairs, wherein is expressed the regret of the German Government that the fraudulent imitation of Sheffield hardware in Germany is a matter which can neither be proceeded against under the German Trade Marks Protection Law of 1874, nor under any other law actually in force in the German Empire."

As regards French Law an enquiry was made by Her Majesty's Ambassador in Paris, which was followed on the 8th January, 1885, by a letter from M. Jules Ferry, French Minister for Foreign Affairs, to Lord Lyons. It was as follows :—

"On the 1st August last, your Excellency was good enough to lay before me a request addressed to the Foreign Office by the Company of Cutlers of Sheffield, who complained that the word 'Sheffield' was being inscribed on knives made in France and not in the English town above named, with the object of deceiving the buyers.

"You expressed, on the occasion to which I refer, a wish to know if the legislation at present in force in France had provided for the case in point, and if the Government of the Republic was of opinion that the 10th Article of the International Convention of the 20th March, 1883, for the Protection of Industrial Property would be applicable to the practice in question.

"This Article, as your Excellency may remember, authorises the seizure of all goods falsely bearing as

“ an indication of the place of origin, the name of a  
“ particular locality, when this indication is joined to a  
“ fictitious business name, or one assumed with fraudulent  
“ intent.

“ The Minister of Commerce, to whose notice I have  
“ brought this communication, has just informed me of the  
“ results of his examination. After having called attention  
“ to the fact that the complaint of the Company of  
“ Cutlers of Sheffield raises questions of law which only  
“ the tribunals have the power to determine when the  
“ matter has been brought before them by interested parties,  
“ M. Rouvier expresses the opinion that the case in point  
“ does not fall within the application of the above cited  
“ Article of the Convention of 20th March, 1883.

“ This enactment does not protect, as such, the name of  
“ a place, except when such name is joined to a fictitious  
“ business name, or one assumed with fraudulent intent.

“ Now it is clear from the complaint of the Sheffield  
“ Cutlers that the name of their locality has been employed  
“ by itself. Also, as to the other point which concerns the  
“ legislation in force in France, that portion of it bearing  
“ upon the present case is found in the law of July 24th and  
“ August 4th, 1824, of which your Excellency will find a  
“ copy appended.

“ It is true that it punishes the placing on manufactured  
“ goods of the name of a locality other than that of their  
“ manufacture. But, in accordance with French jurispru-  
“ dence, foreign manufacturers cannot call this law into  
“ operation unless reciprocity has been established by  
“ treaty.

“ Hitherto no convention has been concluded bringing  
“ about a reciprocity of this nature between France and the  
“ United Kingdom.

“ This being so, it does not seem possible that the Cutlers  
“ of Sheffield can take action in France for the repression

“ of the practice of which they complain, in virtue of the “ law of 1824.”

While these enquiries were being made as to the state of the law in Germany and France, the protection granted by English law to foreign manufacturers was not lost sight of.

The opinion of the Law Officers of the Crown was requested as to the effect of section 7 of the Merchandise Marks Act, 1862 (now superseded by the Act of 1887), by which it was made an offence to affix to any goods a false indication of the place of manufacture with intent to defraud.

On the 8th July, 1884, Lord E. Fitzmaurice wrote to the Cutlers' Company that so far as Lord Granville had been able to ascertain, the provisions of section 7 of the Merchandise Marks Act, 1862, had never been enforced, and his Lordship believed that it was well known that large quantities of goods were made in England and marked with a name other than that of the place of manufacture. Of this, numerous instances could be given, such as cigars marked “ Havannah,” and fancy goods marked “ Paris,” or “ Nouveautés de Paris.” He added that “ with the exception of section 7 of the Merchandise Marks Act, 1862, which, as before stated, was practically inoperative, such a provision as the Cutlers' Company would desire to see introduced into the legislation of France and Germany is not to be found, as far as Lord Granville had been able to learn, in the legislation of any country, and it evidently did not commend itself to the representatives of the Governments who negotiated the Industrial Property Convention.”

M. Ferry's contention amounted to this, that no protection is granted to English manufacturers against the fraudulent marking of goods with the word “ Sheffield ” unless this word is joined to a fictitious business name, or one assumed with a fraudulent intention, and that the Cutlers of Sheffield can take no action in France in virtue of the law of 1824, owing to the fact that there is no Convention granting

reciprocity between France and the United Kingdom. In other words, if such reciprocity were granted by Treaty, Sheffield Cutlers would be able to take action in France under the Law of 1824.

The British Chamber of Commerce in Paris took up the question, contending that this reciprocity existed under Art. 10 of the Commercial and Maritime Convention between Great Britain and France of the 28th February, 1882.\* No action, however, has ever been brought under this Treaty, and the French Government does not appear to put upon it the same construction as the British Chamber of Commerce in Paris.†

Meanwhile, the question has been somewhat simplified on the English side by the adoption of the new Act of 1887. The remedies provided by the Merchandise Marks Act of 1862 for protection within the United Kingdom itself against similar foreign frauds had been found inadequate, and the Revenue Act (1883), 46 & 47 Vict., c. 55, was believed to be practically no protection at all.‡

\* Article 10 of that Treaty, called "a Convention regulating the Commercial and Maritime relations between Great Britain and France," is as follows:—

"The subjects of each of the two high contracting parties shall, in the dominions of the other, enjoy the same protection and be subject to the same conditions as native subjects in regard to the rights of property in trade marks, names of firms, and other distinctive marks shewing the origin or quality of goods, as well as in patterns and designs for manufacture."

"Les ressortissants de chacune des hautes parties contractantes jouiront dans les états de l'autre de la même protection et seront assujettis aux mêmes obligations que tous les nationaux pour tout ce qui concerne la propriété, soit des marques de fabrique et de commerce, des noms commerciaux, ou d'autres marques particulières indiquant l'origine ou la qualité des marchandises, soit des modèles et dessins industriels."

† See Report of this Chamber for 1885.

‡ The *Ironmonger*, of March 5th, 1887, p. 331, said on this subject:—"One of the local newspapers has had a special inquiry made respecting the practice of the Customs authorities, and has elicited certain facts which were only imperfectly known, or, indeed, were not known at all, except to a very limited circle of persons. It has been stated, officially and otherwise, that all goods made

A Bill was brought into Parliament by Mr. Mundella, in June, 1886, and again in the following February, with a view to obtaining the protection required. Its purpose was to repeal the Merchandise Marks Act, 1862, and to substitute on the subject a new legislation complete in itself.\*

A Bill for a similar purpose, patronised by the present Government, introduced in January, 1887, merely amended the Act of 1862.† The Government, however, after introducing this Bill, adopted the principle of that of Mr. Mundella, and brought in a "Merchandise Marks Law Consolidation and Amendment" Bill.‡ This Bill has

abroad and brought into an English port, stamped with the name and address of an English firm, are stopped and confiscated by the Customs officials. It now appears that such is not the case. Under certain circumstances, all that is necessary to get the goods passed is that the consignee or his agent should make a declaration, on a form supplied for that purpose, that the goods bear his name and address. Thus John Smith, of Sheffield, can have cutlery, tools, &c., made anywhere on the Continent, marked there with his name, address, and trade mark, and sent to any British port. He, or his authorised agent, then declares, as per official form, and the goods are free to be sold in this country, or exported, as being the real and genuine products of Sheffield workshops. Articles having a manufacturer's name only are passed without stoppage or inquiry. When articles of foreign manufacture bear a name and mark, they are stopped and not delivered, except upon production of the declaration already mentioned. It thus appears that it is virtually a very easy matter, indeed, for falsely marked goods to come into this country, and for them to be sold without their having ever been near the reputed place of their origin. No fraud upon persons or firms may be perpetrated, but the good name of a town or place may be degraded and lost through the wrongful action of a few persons. Under the new Bills this must be and will be altered."

\* Merchandise Fraudulent Marking Bill, 1886, B. 291. Prepared and brought in by Mr. Mundella and Mr. Acland, last June, re-introduced in February of the present year by the same gentlemen, in conjunction with Sir Charles Russell, Mr. Bernard Coleridge, Sir Frederick Mappin, Mr. Henry H. Fowler, and Mr. Henry Wilson.

†. A Bill to amend the Merchandise Marks Act, 1862. Prepared and brought in by Baron Henry de Worms, Mr. Attorney-General, and Mr. Stuart Wortley, January, 1887.

‡ Prepared and brought in by Baron de Worms, Mr. Attorney-General, and Mr. Stuart Wortley, 11th March, 1887.

been in substance adopted in the Merchandise Marks Act of 1887.

In France, the protection of French manufacturers against fraudulent practices abroad had, much earlier than in England, been the subject of active agitation.

The usurpation by foreign manufacturers of the term "Nouveautés de Paris," plays, in the agitation in France, the part played on the other side of the Channel by the fraudulent use of the word "Sheffield." It is the Paris Chamber of Commerce which, like the Cutlers' Company of Sheffield, has led the van in the public movement for repression. The agitation in France has been followed, however, with much slower results. M. Bozérian, the eminent jurist and Senator, laid a Bill for the prevention of the fraudulent use of Trade-names and Medals and Rewards on the table of the Senate as long ago as 1879. Only the part relating to medals and rewards, however, has as yet become law.

The Laws under which Trade names are at present protected in France, apart from the International Convention for the Protection of Industrial Property, of which more hereafter, are the Trade Names Law of the 28th of July, 1824, and Art. 19 of the Trade Marks Law of the 23rd June, 1857. The Law of 1824 provides that any person who shall affix, or by adding, shortening, or any other alteration, shall cause to appear on manufactured goods the name of any manufacturer but their real manufacturer, or the style of any manufactory but that at which the goods were manufactured, or the name of any place but that of manufacture, will be liable to the penalties prescribed by Art. 423 of the Penal Code, and to damages where they exist, and that any merchant, commission agent, or tradesman will be liable to prosecution who knowingly exhibits for sale or sells goods marked with pretended or altered names.



The Article of the Penal Code above referred to provides that whosoever shall have deceived a purchaser as to the nature of the goods sold, is liable to imprisonment for from three months to one year, and to a fine not exceeding one-fourth part of the damages awarded, or less than 50 francs.

The Court may also order certain publicity to be given to the judgment, at the expense of the person condemned.

As the statute is a penal one, its enforcement is confined to the exact terms of its text. It only mentions manufacturers, manufactured articles, manufactories, and places of manufacture,\* and thus protects only manufacturers. It does not protect merchants who place their trade name on articles offered for sale, but not manufactured, by them.†

The remedy of a *merchant* for the protection of his trade name is not under this Act but by civil action for fraudulent competition under Art. 1,382 of the Civil Code. This Article runs as follows :—

“ A man who by any act	“ Tout fait quelconque de
“ causes damage to another	“ l’homme qui cause à autrui
“ person or persons is bound	“ un dommage oblige celui
“ to make reparation.”	“ par la faute duquel il est
	“ arrivé à le réparer.”

Art. 19 of the Law of 1857 provides that “all foreign articles bearing either the trade mark or name of a manufacturer residing in France, or the name or place of a French factory, are prohibited from entering or passing through France, or being warehoused there, and may be seized wherever found, either by the Customs authorities,

\* The name of a locality renowned for its manufacture constitutes a collective ownership by the manufacturers of the district, and they have a right to intervene in any actions for the usurpation of this name, and to claim damages for the loss which the counterfeit may have caused them.—Court of Cassation, 12th July, 1845.

† Court of Appeal, Orléans, 21st February, 1882.

or at the instance of the Public Prosecutor, or of a person whose rights are infringed.”

The wording of this statute, as is seen, is absolute. It does not distinguish between a case where there is fraudulent intent and cases where there is none. The Court of Cassation, however, by a decision of the 9th of April, 1864, declared the above Art. 19 of the Law of 1857 applicable only in case of fraudulent usurpation, and that, consequently, there was no offence where a manufacturer had caused or permitted his name or mark to be placed on goods manufactured abroad. In other words, the statute did not protect the public, but manufacturers only. A Ministerial Circular, issued on the 8th of June, 1864, gave instructions for the application of Art. 19 of the Law of 1857 in this sense.

The Court of Cassation, in 1884, after leaving the public in error during twenty years, decided that its ruling of 1864 was misunderstood, and rushed into the opposite extreme. It found that Art. 1 of the Law of the 28th July, 1824, “prohibits absolutely and punishes the placing on industrial products of the name of any place other than that of manufacture, or the causing of its appearance by means of any alteration; and that the principles laid down by this Law have been maintained and confirmed by Art. 19 of the Law of 23rd June, 1857, by the terms of which all foreign products bearing either the mark or the name of a manufacturer residing in France, or the name or place of a French manufactory, are prohibited from entry, excluded from transit or warehousing, and may be seized wherever found, either at the instance of the Customs authorities, or of the Public Prosecutor, or of any person whose interest is affected.”\* This new decision rendered it requisite to recall the instructions contained in the Ministerial Circular of the 8th June, 1864, and to issue a fresh

\* Court of Cassation, 23rd February, 1884.

Circular, in virtue of which for the future all goods without distinction, coming from abroad, and bearing the mark or name of a French manufacturer or locality, or even a name from which it might be inferred that the articles were of French origin, are to be seized. A number of seizures have been made by the authorities in consequence of these instructions.

The ruling of the Court of Cassation seems, however, to have been misunderstood again, for the Courts of Law have not upheld a number of seizures which were apparently in accordance with the decision of the Court of Cassation and the Ministerial Circular.

The decisions reported declare legal the affixing of the importer's name to goods manufactured abroad, when nobody is deceived as to their origin, or their origin is a matter of indifference, or the place of sale is not a place where goods of the kind in question are manufactured as a staple industry. The Correctional Tribunal of Havre decided on the 10th of September last as follows:—

“ Ne tombe pas sous l'application de l'article 19 de la loi du 23 juin, 1857, ni de l'article 1<sup>er</sup> de la loi du 28 juillet, 1824, le fait, par un négociant français, de faire apposer, sans esprit de fraude, son nom, sa marque, et son adresse en France sur des produits de fabrication étrangère.”

The Correctional Tribunal of Nancy, in August, 1886, held that it does not apply especially where the French locality, the name of which was placed on articles of foreign manufacture, was not known as a special place for the manufacture of such article.

The Court of Appeal of Toulouse\* was still more decisive: “ Attendu,” it said, “ qu'aucune loi n'oblige un commerçant à faire connaître le lieu d'origine des objets qu'il met en vente; Que la loi prohibe seulement l'apposition, sur les produits, d'indications fausses devant ou pouvant faire

\* December 8th, 1886.

croire que ces produits émanent d'un fabricant autre que celui qui en est l'auteur, ou d'un lieu autre que celui de la fabrication, ou bien encore pouvant tromper l'acheteur sur la véritable nature de la marchandise : Qu'une simple adresse de maison de vente, dans les conditions de fait ci-dessous précisées ne saurait rentrer dans les prévisions de la loi."

This decision has been upheld by the Court of Cassation.\* The Customs authorities must now be in some difficulty to understand their duties.

In presence of the uncertainty of the Law, M. Lockroy, late Minister of Commerce, brought in a Bill for ratifying, by a legislative enactment, the later ruling of the Court of Cassation. M. Lockroy was not aware that M. Bozérian had laid a Bill on the table of the Senate in 1879. This Bill, as we have seen, dealt with the fraudulent use of trade names and medals and rewards.

It was subsequently divided into separate Bills, of which that relating to medals and rewards passed into law last year. The other was adjourned for enquiry by a Special Committee of the Senate, and the report of this Committee, drawn up by M. Dietz-Monnin, was published also last year.

The general opinion of the Committee was that there should not be an amending Law, and that, in view of the advantage thereof to mercantile men, the subject should form the matter of a single consolidation Bill.

A general Bill in 30 articles was therefore brought in by M. Dietz-Monnin, and thereafter a Counter-Bill by M. Bozérian, dealing specially with the question of fraudulent marks employed for the purpose of representing commodities manufactured or coming from abroad, as of French origin.

M. Lockroy withdrew his Bill on learning that the discussion of the matter was already so far advanced.

\* The judgments are given at considerable length in the *Journal de Droit International Privé*, for 1886. See also the same periodical for 1887, p. 189.

M. Lockroy's Bill made an offence the mere fact of placing on goods the name of any place other than that of their origin. This was a provision in accordance with what was supposed to be the current ruling of the Court of Cassation, a ruling which, as we have seen, the Courts of First Instance have found it in many cases impossible to apply, and which the highest Court itself has not upheld.

M. Dietz-Monnin's Bill grants the same protection to Trade Names as to Trade Marks under the Law of 1857, which provides as penalties for infringers and imitators, imprisonment not exceeding three years or a fine not exceeding 3,000 francs.\*

M. Bozérien's Bill, which is the one most likely at the present moment to be adopted, whether singly, or by incorporation into that of M. Dietz-Monnin, provides as follows:

Art. 1.

"A fine of 1,000 to 5,000 francs and imprisonment of from three months to three years, or one of the two, shall be imposed upon:—

"(1.) Those who, with fraudulent intent, have placed on goods either manufactured or coming from abroad, or on wrappers, bands, or labels, any names, marks, signs, or indications destined to make believe (*destinés à faire croire*) that the goods have been manufactured in or come from France.

"(2.) Those who, with the same intent, have employed fraudulent means or combinations of a nature to deceive (*de nature à tromper*) in regard to the true origin of goods.

"(3.) Those who fail to indicate the country, when goods are manufactured in or come from a foreign locality bearing a name similar to that of a French locality.

"(4.) Those who have knowingly sold, exhibited for sale, introduced or endeavoured to introduce into France, or put into circulation such goods."

\* Arts. 12, 17, 18, 19.

The clause proposed by M. Bozérien, it is seen, distinguishes between innocent and fraudulent cases, by making fraudulent intent the criterion.

The subject of M. Bozérien's Bill is of great importance to English houses trading with France, especially such as have trade agencies there. In fact, in the case of importers, the name of the vendor, rather than that of the manufacturers, is the recommendation to the public.

Apart from the question of the protection granted by the domestic legislation of the two countries is that given by the International Convention for the Protection of Patents, Trade Marks, Trade Names, Designs, and Models, of 1883. Art. 9 of this Convention provides that

"All goods illegally bearing a trade mark or trade name may be seized on importation into those States of the Union where this mark or name has a right to legal protection," and that

"The seizure shall be effected at the request of the public prosecutor, or of the interested party, pursuant to the internal legislation of each country."

Article 10 of the same Convention restricts the application of this Article. "The provisions of the preceding article," it states, "shall apply to all goods falsely bearing the name of any locality as place of origin, when this indication is associated with a fictitious trade name, or one assumed with a fraudulent intention." "Any manufacturer of, or trader in these goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party."

Thus, the usurpation of the name of Sheffield does not fall within the application of the Convention, unless associated with a fictitious trade name or one assumed with fraudulent intent.

The first meeting of the Union since its creation was held last Spring at Rome. Delegates on behalf of the Cutlers'

Company of Sheffield attended it with the special purpose of promoting the adoption of an additional clause in the Convention for the protection of the word "Sheffield," which was couched by the British delegates in the following terms :—

"Every article bearing illegally a false indication of origin may be seized on importation in all the contracting States. The seizure may also be effected in the country where the false indication has been put on the goods, as well as the country into which the goods are imported. The seizure shall take place at the instance of the public prosecutor, or of any interested person, individual, or company, in accordance with the domestic legislation of each State. The tribunals of each country must decide what are the appellations which, by reason of their generic character, do not come within the present regulations. The authorities are not bound to seize in case of transit." This resolution was warmly supported by the French delegates, and was carried by eight votes to one, with three abstentions, shewing that the general sense of the Conference was favourable to it.

It may be mentioned that the Delegates voted on the propositions before them as at a gathering where the sense of the majority prevailed.

Several Delegates, however, appear to have voted in its favour, merely because they intended to vote also for a rider, added at the suggestion of the Belgian Delegate. This rider is as follows :— "There is no fraudulent intention in the case mentioned in Section 1 of Article 10 of the Convention, when it shall be proved that the name on the imported goods has been affixed to them with the consent of the manufacturer, whose name is thus used."

The French Delegates protested against the addition, which they declared unacceptable by France.

In fact, it is in accordance with the old ruling of the Court of Cassation which the same Court has since repudiated. The clause was carried by five votes to four, with three abstentions.

The British Delegates were, of course, among the noes.

It is manifest that the object and effect of the additions were to leave a loophole for the case of foreign manufacturers by whom these goods of foreign origin are passed off as of their own make. By virtue of such a clause any Sheffield house, under cover of its name, could flood the markets with German or Belgian cutlery marked "Sheffield." Section 16 of the New Merchandise Marks Act, however, provides against such fraud as regards England.

The upshot of the Conference, therefore, is that Great Britain and France are prepared to adopt the first part of the Article, and are hostile to the second part, and that five States will only adopt the first part with the second. Though, in these circumstances, the result of the Conference at Rome, for practical purposes, may be said to be nugatory, an important point has been established, viz., that France and Great Britain take the same view of the chief question brought before the Conference. The immediate state of the question as regards British interests in the former country, therefore, is that the old domestic law continues to prevail, and will continue to prevail, until modified by an Anglo-French Treaty or by the partial adoption of the first part of the Rome resolutions without the second, which would come to the same thing. Cutlery bearing the name of Sheffield can be imported into France from Germany, and any French house can affix the same name to its wares with impunity as heretofore, and the Bills at present under discussion in the French Chambers do not in this respect alter the law. That of M. Bozérian is headed as "*relative aux fraudes tendant à faire passer pour français des produits fabriqués à l'étranger ou en*



provenant." M. Dietz-Monnin's Bill adopts, under Art. 16, the wording of Art. 6 of the Law of 1857, viz. :—

"Les étrangers, et les Français dont les établissements sont situés hors de France, jouissent également du bénéfice de la présente loi pour les produits de ces établissements, si dans les pays où ils sont situés, des conventions diplomatiques ont établi la réciprocité pour les marques Françaises." Thus, whether M. Bozérien's or M. Dietz-Monnin's Bill should be adopted, the rights of non-resident foreigners will remain as at present, in the absence of International regulations.

If the Governments of Great Britain and France decided on effecting an agreement on the question without waiting for the outcome of any attempt to bring the countries forming the International Union to the adoption of the desired clause, the article proposed by the British Delegates at Rome might serve as the basis of negotiations, seeing that representatives of the two countries in question have already, at least *ad referendum*, accepted it. The terms of it might, however, be improved by being reduced to their very simplest expression, as the same treatment as native subjects is practically all that need be stipulated. \*

Under the new British Act (it applies to England, Scotland and Ireland) there is no doubt as to goods made abroad and bearing marks calculated to deceive as to their origin being subject to stringent provisions. The expression "trade description," says section 3, means any description, statement, or other indication, direct or indirect, "as to the place or *country* in which any goods were made or produced." Section 18, explaining this provision, excepts generic terms indicative of a particular class or method of manufacture which may have originally indicated a place of production or manufacture. Section 16 provides for prohibiting the importation of falsely marked goods. There is also no doubt, as is shewn above, that French law prohibits the entry into France of goods bearing false marks of a similar

character, although not applicable where foreign places of origin are concerned, but Art. 6 of the law of 1857, we have seen, provides that “foreigners and Frenchmen whose establishments are situated outside France also enjoy the benefit of the present law for the manufactures of these establishments, where, in the countries in which they are situated, Diplomatic Conventions have established reciprocity for French marks.”\*

We have seen, moreover, that the alterations proposed by MM. Bozérien and Dietz-Monnin do not alter this provision. All, therefore, which Englishmen now require is a Diplomatic Convention giving them the benefit of the same treatment as subjects and citizens.

The following form of Convention would suffice:—

“Whereas it is desirable in the interest of honest trading to prevent the circulation of goods marked with any false indication of origin, whether manufactured within either country, or imported from any other country, it is hereby agreed as follows:—

“The High Contracting Parties engage to take the same precautions to prevent the entry into their respective dominions of goods fraudulently marked as of origin in the other’s dominions, as are taken to prevent the entry from abroad of goods fraudulently purporting to be of native origin.”

With such a Treaty clause as this, subject to its conscientious enforcement, a serious grievance would be removed, and this would be done without asking for the amendment of existing Legislation in either country.

THOMAS BARCLAY.

\* It might fairly be contended that where reciprocity is granted by law without the intervention of a Treaty, this Article is equally applicable. This, however, is a matter of construction which no English litigant has yet tested in Court, and the alternative of a Treaty clause would place the subject beyond doubt.

## II.—THE PRACTICE OF COUNTY COURTS.

THE publication of the third edition of Mr. Pitt Lewis's well-known text-book on County Courts,\* fresh from the *officina* of its diligent and erudite authors, undiminished in bulk, and undiminished in reputation, is a certain sign, not only of the general appreciation of the book by the Legal Profession, but also that such a book requires constant revision in order to keep pace with the many changes and modifications, both in law and practice, which have occurred, or which have been framed, since the publication of the last—the Second Edition—in April, 1883.

These changes in the law applicable to County Courts proceed in part from the Bankruptcy Act of 1883 (which, coming into force on the last day of that year, is practically an Act of 1884), and from the Bankruptcy Rules of 1883, made in pursuance of the above Act. Bankruptcy, however, being administered by some—not by all—County Courts, the innovation in the County Court learning would not have been so keenly felt, had it not been for the issue of new County Court Rules in 1886. These Rules dealt a severe blow to the happy routine into which County Court lawyers had contrived to fall, while, in addition, a few promiscuous Statutes, each tinkering a little the County Court law or practice, had been by late Sessions of Parliament sprinkled over the *indigesta moles* of this unsettled jurisprudence; all this made, as it were, confusion worse confounded, and destroyed the peace of mind of the contented general practitioner.

\* *A Complete Practice of the County Courts, including that in Admiralty and Bankruptcy.* By G. PITT LEWIS, Esq., Q.C., M.P., Recorder of Poole, assisted by H. A. DE COLYAR, Barrister-at-Law. Third Edition. Stevens & Sons. 1887.

We devoted considerable attention in these pages,\* in 1879, to the then burning question of the expediency of extending the jurisdiction of County Courts. Lord Cairns had introduced a Bill to enable actions in contract or in tort, and actions for the recovery of small tenements on the expiration of leases, and upon forfeiture for non-payment of rent to be brought in those Courts, if the debt, damage, or demand did not exceed £200. The same Bill proposed to extend the Equitable jurisdiction of the County Court to £1,000. Lastly, it proposed to invest the Court with all the power and authority of the Chancery Division of the High Court of Justice, to relieve against fraud or mistake, and to enforce a charge on a married woman's separate estate, subject to a general limit of £1,000 in respect of the damage, estate, fund, or debt.

But the Bill was wrecked. It contained a great deal of good, and also a certain proportion of bad. The legal dovecote was in a flutter, and the voice of the lawyer was heard in the land. The Incorporated Law Society presented a petition to Parliament, pointing out that in their opinion the County Court was not adapted for the important class of business which the Bill proposed to transfer to it, and also drawing attention to, perhaps, the most tangible of all considerations, viz., costs. These, the Petition noticed, were completely controlled by the Bill, while in their opinion the "costs should in all cases be in the absolute and uncontrolled discretion of the Judge, in accordance with Rule 47 of the Supreme Court of Judicature Act, 1873."†

\* *The Proposed Extension of County Court Jurisdiction*, Art. by B. L. Mosely, LL.B., Barrister-at-Law, in *Law Magazine and Review*, No. CCXXXII., for May, 1879, p. 345.

† This was one of the Rules of Procedure 1873, all of which were repealed by s. 33 of the Supreme Court of Judicature Act, 1875; but the above provision is re-enacted, with certain desirable qualifications, in the Rules of the Supreme Court, 1883, O. 65 R. 1.

The County Court lawyer is aware that the whole jurisdiction of the modern County Court is really based on Statute Law, and that, with the exception of its name, there is no affinity between the modern County Court and its Anglo-Saxon predecessor, the *Scir-gemót*. The original idea was due to Lord Brougham—then Mr. Brougham—who first proposed to the Nation, in 1830, that local Courts should be established in every county, suggesting that the experiment should be first tried in the counties of Kent, Durham, and Northumberland. The provisions of Mr. Brougham's Bill were general in their character, and the arrangements were so contrived that the introduction of a single clause would render the measure relating to the above three counties susceptible of general application to every other county. Being adapted to any county, it was easy of extension to the whole of England. Brougham's object was to afford all suitors a cheap, expeditious, and convenient court of law, by bringing Justice and its administration home to their doors, and thereby to confer an important benefit on the community. His system, as first evolved, included six branches of Judicature—three compulsory and three voluntary. The first comprehended all actions of debt to the amount of £100, and of tort to that of £50—the torts which Brougham intended principally to meet being slander, assault, collision of ships, and false imprisonment. He also prepared a system of pleading to be employed in these Courts, by which he intended to avoid the various faults incidental to formal and lengthy pleadings, such as uncertainty and prolixity, all of which he hoped would be unknown to the system which he had devised. Further, the County Court was intended to be cheap. There were various means appointed to empower each Court to exercise a discretionary authority in order to keep the pleaders to conciseness, clearness, and simplicity, and to banish all wilful mis-statement and

technical mystification. The parties to an action might, if and when so minded, dispense with a Jury ; but, on the other hand, the Judge was to have power to call in a Jury if the facts appeared to him to be such as to render their assistance necessary. Doubtful points of law, occurring in any case tried in the County Court, were to be reserved for the decision of the Judge of Assize, after the model of the constant practice of Courts of Quarter Sessions. A second branch of the compulsory jurisdiction was an attempt to improve the then existing procedure of the Courts of Request or Conscience, for the recovery of small debts to the value of £5. The third branch of compulsory jurisdiction was that which related to legacies. A great deal of prejudice at that time existed in the minds of persons who felt jealous of the possible infringement on the jurisdiction of the Ecclesiastical Courts, and this step was calculated to inspire alarm. It was not, therefore, proposed to interfere in the distribution of the property of a deceased person, except in cases where it was admitted that there were assets unadministered in the hands of the executors or administrators. The grievance which this enactment was specially intended to meet was the case of an executor who might defy the legatee, well knowing that no one would attempt to pursue his purpose in the Ecclesiastical Courts for a legacy or claim of £50 or £100. The intention of Brougham was that, six months after notice of such claim to the executor, redress should be open in the County Court for the claimant, and also in cases of a similar nature after twelve months had expired subsequent to the death of the testator or intestate ; a special form of pleading was prepared to meet such cases ; thus the defence might be that the party was not the executor, or that he had no funds unadministered in his hands, or that, having such free funds, he was apprehensive of their being taken out of his hands by other claimants

to them. In default of some such plea, the claimant was given a remedy in the proposed County Court.

Of the three voluntary jurisdictions, the first was to be a prorogation, by consent, of the jurisdiction of the Judge. The second was the expedient of rendering the whole matter in dispute subject to a trial by the Judge of the Court. The third and last was the mode of deciding causes by a voluntary reference; and to this was added a provision for enabling the suitor, in case anyone had raised a claim, or even if he were apprehensive that anyone would raise a claim against him hereafter, to cite such claimant, or possible claimant, against him, into the County Court, and compel him to establish such adverse claims, or be barred for ever.

The proposed use of the County Court as a Court of Reconcilement was altogether abandoned in the subsequent history of this great legislative scheme. Nevertheless, although the French lawyers who at the time were consulted by Brougham doubted the utility of such a Court, the Flemish and Dutch lawyers approved of it. It was ascertained that such Courts flourished in Denmark, and in the Free City of Hamburg; that of 50,000 cases brought before the Courts of Reconcilement in places where such tribunals existed two-thirds or three-fourths were settled; that not one shilling was charged to the parties frequenting them; and that such persons had not occasion to darken the doors of a Court of Justice. Thousands of cases were settled by those Courts which previously were carried before the ordinary tribunals.

It was not, however, until 1846 that the excellent plans of Lord Brougham for the benefit of his country were carried out, and even then only in part, by the 9 & 10 Vict., c. 95, "An Act for the more easy recovery of small debts and demands in England," a little more than forty years ago. Yet during this period the County Court has

more and more developed. Its Common Law jurisdiction has been enlarged; not only that, but it can also entertain suits in Equity to the value of £500; in 1868, an Admiralty jurisdiction was bestowed on it, and the following year witnessed it armed with the powers of a local Court of Bankruptcy. Nor do these extensive jurisdictions mark the limits of the powers conferred on Lord Brougham's judicial offspring. The County Court of the present day has to deal with the Trustee Relief Act, the Settled Land Act, the Agricultural Holdings Acts, the Friendly Societies Acts, the Industrial and Provident Societies Act, the Building Societies Act, the Literary and Scientific Institutions Act, the Local Loans Act, the Employers' Liability Act, the Married Women's Property Act, and with Probate. In fact, and year by year, the County Court, created by the fertile brain of Lord Brougham, has grown apace and has far outgrown the scheme of its inventor. How far this may be desirable is a very grave question, which the next few years will probably answer. Meanwhile it is very doubtful whether a Court of such large and important powers would meet with the approval of Brougham, who rather aimed at the establishment of simple, homely tribunals in every county, for expeditious justice *sine strepitu forensi*, and above all for justice without great cost. The County Court certainly does not possess these attributes at present, and it is hardly to be expected that it should ever enjoy them without the cautery of Legislative interference. Meanwhile, the idea of a Court of Reconciliation,—that golden idea of Lord Brougham, Arbitration without any cost—has entirely disappeared from notice.

The County Court of the present day, nevertheless, is the Court which more immediately claims our attention, as distinguished from what the County Court might, should, could, or ought to be. The magnitude of its jurisdiction,



as we have before observed, and the multiplicity of the matters it is called on to deal with, render a really well planned text-book a necessity to the County Court practitioner. Without it, he will wander hopelessly in the labyrinth of Statutes, new and old, existing and repealed, or, worse still, partly repealed; and well might he be excused for becoming giddy over the task of elaborating the rules and of applying them. Even to the well read lawyer, the advantage of a work, where he can feel sure that accuracy is the rule, that no repealed section is left in, and no new decision omitted, cannot but be manifest. We feel sure that he will find these invaluable attributes, in the book before us, to the extent that the volume proposes to impart its information; by this we mean, that it was not possible for the authors to deal effectively with so immense a task in a single volume. Therefore, while awaiting the issue from the Press of the second volume, the readers are compelled to postpone the acquirement of the Admiralty Practice, of the proceedings under special Statutes, and of the Bankruptcy Practice.\* The one volume already published, however, yields an abundant fruit. The life of an ordinary Action from its inception to its close is elaborately traced through all the vicissitudes that can possibly befall it; and it is here that we especially notice the great changes which have been effected by the new Rules of 1886. Following the example of the Rules of 1875, they consist mainly of Rules assimilated to the Rules of the High Court, and the learned authors do not hesitate to give with a liberal hand the decisions, on points of practice, of the High Court, whenever similar Rules exist in the County Court.

\* While these pages are passing through the Press, the County Court Consolidation Bill, introduced by the Lord Chancellor (Lord Halsbury), is under the consideration of Parliament. By this Bill, it is proposed to consolidate the existing legislation (with the exception of the Admiralty Jurisdiction) referring to County Courts.

Nor is this all; the reasoning on the decisions is clear and harmonious, and it should not be forgotten that it was Mr. Pitt-Lewis who defined a counter-claim, in the first edition of this work, which definition has since been adopted and acted on as Law. The portion devoted to Interlocutory Proceedings, in aid of the Action itself, has been rearranged, while the question of "Appeals from County Courts" has drawn forth some strong observations from the author as to the power of the framers of the new Rules to abolish appeals by way of Special Case. A new edition of so important a work on County Court practice was much wanted; it was well timed to meet the demand; and will do much to temper many of the difficulties which we have dwelt upon above, in our brief sketch of County Court Practice.

SHERSTON BAKER.

### III.—FOREIGN MARITIME LAWS: II. ITALY.

#### MERCANTILE MARINE CODE.

#### CHAPTER IX.

#### *Of Discipline on Board.*

ART. 92. Captains and skippers must preserve order and discipline on their own ships, and all persons who are embarked, in whatever capacity, must pay them due respect and obedience in everything relating to good order on board, the safety of the ship, the care of the cargo, and the success of the voyage.

To this end captains and skippers may exercise the disciplinary power granted to them by Art. 450, and those following it. In no case, except that of the exigency of the service on board, can a captain or skipper hinder his ship's

crew from going before the Maritime or Consular authority to present complaints.

Cf. Mer. Ship. Act, 1854, §§ 232, 239, 243, and 43 & 44 Vict., c. 16, §§ 10, 12, Sch. II.

93. If a crime or misdemeanour is committed on board a ship in the course of a voyage, the captain or skipper must proceed in accordance with Art. 436. In case of a death happening on board, the captain or skipper will proceed in the way laid down by the article following it, viz., 437.

Cf. Mer. Ship. Act, 1854, §§ 267, 268.

94. If in the course of a voyage the supply of water or provisions runs short, or goes bad, the captain or skipper must take all possible steps to provide for the necessities of the persons on board.

To this end he must procure the necessary supplies from ships he falls in with, or make for the nearest port, even when to do so it is necessary to deviate from his course.

95. If the crew do not receive the full rations stipulated for before sailing, or, if there has been no agreement on the subject, that required by the regulations, whilst there are sufficient provisions on board, or if they have run short or been altered, it being possible to get fresh supplies, compensation is due to the crew without prejudice to the penalties incurred by the captain.

If the short allowance is rendered necessary by unavoidable circumstances there is due to the sailor the actual value in money (of the provisions he has not had). The unavoidable circumstances must be stated formally in the log, and signed by the officers of the ship.

Cf. Mer. Ship. Act, 1854, § 223.

96. Members of the crew, not less than a third in number, may bring a complaint of the quality, or insufficient quantity, of the provisions before the Maritime authority within the realm, and before the Consular authority abroad, and, failing them, before the commander of a King's ship, and, failing him, before the local authority.

A similar complaint may be made by any passenger.

The authority indicated above, having first ascertained the true state of things, will, if the case is proved, order the captain or skipper at once to provide what is needed, and if he does not obey, will provide it officially by borrowing the necessary sum on bottomry on the hull and rigging of the ship, and subsidiarily by selling or pledging goods to the required amount.

Cf. Mer. Ship. Act, 1854, § 221. As to passengers (emigrants), the provisions and water are surveyed before the vessel leaves.

97. If the clandestine shipment of firearms or side-arms (*armi bianche*), powder, or combustible goods, be proved, such articles will be sequestered by the captain or skipper, and in the second case may be destroyed or secured in his own cabin, to be confiscated at the termination of the voyage.

The author of the clandestine shipment will besides be punished by fine up to 200 *lire*.

Cf. Mer. Ship. Act, 1873, §§ 23—28.

98. Captains and skippers are responsible for effects and money left by persons who die on board.

They must make out an inventory of them to render an account to the Maritime authority within the realm, and to the Consular officials abroad, in the way laid down by the regulations.

Cf. Mer. Ship. Act, 1854, §§ 194—199, 273.

99. The effects mentioned in the last article may, if there is a risk of their deteriorating, or for any good reason, be sold by the Port officials or by the Consular officials abroad.

They may even be destroyed by the captain or skipper, a proper statement of the case being signed by the ship's officers and entered in the log, when the preservation of the above-mentioned articles may be injurious to ship's health.

Cf. Mer. Ship. Act, 1854, §§ 195, 196.

100. When the effects referred to in the two preceding articles are not claimed by a person having a right to them within a year from the day of notice, given in the form laid down by the regulations, they will be sold by auction.

The proceeds, together with the money left by the deceased, less expenses, will be deposited in the bank (*Cassa dei Depositi*)\* and carried to the account of the person to whom it belongs.

Cf. Mer. Ship. Act, 1854: § 202, gives six years for claims to be brought in.

## CHAPTER X.

### *Of the Regulations for Navigation.*

101. Vessels of the Mercantile Marine will hoist the national flag of the pattern and in the cases laid down in the regulations.. Whilst on a voyage they must have on board the maritime documents mentioned in Arts. 36, 102, and 144 the certificates of the surveys prescribed by Arts. 77, 78, 79, 82, and 85, and the certificate of measurement.

Cf. Mer. Ship. Act, 1854, §§ 103—106.

102. If in consequence of a mishap, or other unavoidable circumstance, the ship's papers are lost on a voyage, the captain or skipper must state the fact in the first port at which he touches, at the port office or to the Royal Consular official. If the port touched at is in a foreign country, the Consular official will provide provisional papers to enable him to continue the voyage.

Ships built or bought abroad are also supplied with provisional registers and muster-rolls to nationalise them.

Cf. Mer. Ship. Act, 1854, §§ 48, 49, 54.

103. Ships of war belonging to the State exercise the police surveillance over national ships both on the high seas and in foreign countries where there is no Consular agent, or on his request. For this purpose the commanders

\* See Art. 151 *post*.

of the said ships may proceed to a survey of a ship, to an inspection of her papers, to hear complaints raised between the captain and persons on board, and commit offenders.

Ships which do not possess any of the prescribed papers, or which have false papers, will be taken into a port belonging to the State, or into the nearest foreign port in which a Royal Consular official is resident.

Cf. Mer. Ship. Act, 1854, §§ 260—263 ; Mer. Ship. Act, 1871, § 8.

104. Any ship of war belonging to the State, though not employed as a cruiser, which falls in with a national vessel in any sea, which being found under the conditions contemplated by Arts. 341 and 342 of this Code is suspected of being engaged in the slave trade, is authorised to capture the same and carry her into a port within the realm, or into the nearest foreign port in which a Royal Consular official is resident.

105. Captains and skippers who fall in with men-of-war belonging to the State at sea, or find them in foreign ports, must furnish them with the advices, informations, and notices which are required of them.

106. Captains and skippers must also obey the demands of ships of war of friendly powers, and that when the persons making the demand prove their nationality, under pain of forfeiting the protection of the Government in respect of any damage they may sustain in consequence of the refusal. But they are not bound in time of peace to be subject to visit or other act of jurisdiction on the part of foreign ships, except so far as is ordered in relation to Naval stations subject to cruisers for prevention of the slave trade. Captains and skippers to whom any violence is done must protest and make depositions of the circumstances to the proper authority.

107. The command of the ship in everything concerning manœuvres and nautical directions belongs exclusively to

the captain or skipper. An agreement intended to evade what is laid down by this article is prohibited.

See note to Art. 66 *ante*, and Arts. 192—198 *post*.

108. Where for any reason there is no captain or skipper, the command of the ship belongs to the chief officer, and failing him to the other deck officers, according to their rank, and then to the boatswain as far as the first port of call, where, in default of instructions from the ship's husband, it (the command) will be provided for by the Maritime or Consular authority.

Cf. Mer. Ship Act, 1854, §§ 240, 260, 263; and see the *Alexander*, 1 Dods 281; the *Cynthia*, 16 Jur. 748; the *Eliza Cornish*, 1 Spinks 36.

109. Captains and skippers are forbidden to ship on board the vessels they command arms or munitions of war unless they are described on the muster-roll for the Maritime authority or Consular officials, having regard to the regulations laid down on the subject.

They cannot increase such arms and munitions, whatever be the number of the crew, without the authority of the above-mentioned functionaries.

110. Captains and skippers, in that which concerns lights for navigation at night, signals in time of fog, and the steering of the ship to avoid collisions, must conform to what is laid down by the regulations relative thereto. Further, on entering and leaving a port, in passing through channels, and in all other cases which are more than usually dangerous, they must be on deck assisted by the deck officers.

111. Whatever the danger may be, the vessel must not be abandoned until the captain and crew have exhausted all the methods suggested by good seamanship to save her.

In no case is the vessel to be abandoned unless the captain or skipper has taken counsel with the ship's officers (the doctor excepted), and with two, at least, of the best seamen.

The captain or skipper must always be the last to leave the ship, and must save with him the log-book and other ship's papers, and as much as he can of the most precious articles.

112. If a vessel be wrecked or lost through any other mishap, or if it be abandoned, *for any reason*, in consequence of a collision or other accident happening to the ship, and any person is maimed or killed, the facts shall be drawn up in a formal deposition, and proceedings shall be taken by the Maritime authority within the realm and by the Consular authority abroad to obtain information as to the cause of the accident and upon the conduct of the captain or skipper, in the manner and form laid down by the regulations.

Whenever reasons are found for suspicion as to the conduct of the captain or skipper, or other person implicated in what has happened, the information obtained and documents will be sent to the competent authority to institute proper proceedings.

113. Captains and skippers when abroad are forbidden to harbour any person, even a native (Italian), who is being sought for by the police for ordinary crimes.

Cf. Mercantile Marine Code, *post*, Art. 183.

114. With the exception of the case provided for by Art. 375 captains and skippers of national vessels must give shelter to any national seafaring person that they find left in a foreign country where no Royal Consular officer resides.

They are also clearly bound to receive on board such native Italians as the Consular officials find it necessary, for any reason, to send home, provided the number of such persons does not exceed the proportion of 1 to every 100 tons burthen.

The expenses of keeping them and their passage-money, in either case, when there is reason for it, will be regulated and repaid in the way which shall be laid down by the regulations.



## CHAPTER XI.

*Of the Arrival of Ships.*

115. On the arrival of national vessels in a port or roadstead of the realm, the official whose business it is to receive the ships will cause the log to be shewn to him, and will affix his *visa* thereto page by page, filling up the blank spaces with lines, and commencing from the day on which the voyage began, or of the last *visa*, so as to secure the log from being altered.

At the same time the official who vides the log will ask the captain or skipper if any damage has been sustained, and if there has not, he will add to his *visa* the certificate, "No declaration of damage" (*"Nessuna dichiarazione di avaria"*).

If the captain or skipper reports that damage has been sustained, the officer will take a copy, signed by the captain, of that portion of the log which refers to the damage. If no mention is made of it in the log, the officer will demand and receive a sworn deposition of the captain about the damage sustained. The officer will notify in the log the fulfilment of this formality, and will return the log to the captain.

The copy or deposition mentioned above will then be forwarded by the official to the chief officer of the port who, if it is "general average," will at once proceed to a summary investigation of the nature, extent, and cause of the said average, and afterwards forward all useful documents to the Judicial authority whose duty it is to receive the account in accordance with Commercial Law.

In foreign ports, the proceedings mentioned in the preceding paragraph will be taken by the local authority in the first place the captain comes to, if such authority is authorised to do so by the laws of the country or International Treaties, otherwise they will be taken by the Royal Consul.

116. Captains and skippers of national vessels must present themselves in person, unless lawfully hindered, at the port office if within the Realm, at the consulate if abroad, within twenty-four hours (of their arrival), and then leave the ship's papers and log, and the depositions referred to in Articles 440. 441.

Skippers of vessels which have no log must, within the same time, declare to the Maritime or Consular authority any offences which have been committed on board. In foreign ports, where the local authority will not receive the declaration of General Average mentioned in the preceding article, captains and skippers must produce their log-book to the Royal Consular officers immediately after being admitted to pratique.

117. Captains and skippers of foreign vessels who enter the ports and roadsteads of the State, must deposit their ship's papers at their respective Consulates, and must further produce to the port officials, within twenty-four hours of being admitted to pratique, a certificate from the said Consul in which the deposit of such papers is stated.

This arrangement is not applicable to the captains or skippers of Foreign States in whose ports Italian consuls are not allowed to have the custody of the papers of Italian ships. Such persons must deposit their ship's papers at the port office.

Captains and skippers of all vessels, as well national as foreign, must besides, on arrival in a port or roadstead of the State, and whether in case of a voluntary or compulsory putting in, leave at the port office, within the above-named time, a statement of the name, tonnage, and draught of water of the ship, the name of the ship's husband or agent, the quality and quantity of the cargo, and the number of the crew and passengers.

118. Captains and skippers of national ships must give to the Port and Consular officers of the ports they touch

at such information about their voyage as they are asked for.

119. Captains and skippers of national ships must, when requested, produce the members of their crews and the passengers before the Maritime authority within the realm, or the Consular authority abroad, *for the purpose of being confronted, when necessary.*

## CHAPTER XII.

### *Of Wreck and Salvage.*

120. The captain of a national ship, who falls in with another vessel, even a foreigner or enemy, in danger of being lost, must go to her help, and offer her every possible assistance.

This section shews a remarkable divergence between Italian and English Law. According to the latter, a deviation for the purpose of salving property is not justifiable as against the owners of cargo or underwriters, though a deviation to save life is:—*Stamp v. Scaramanga*, 4 C. P. D. 316. The only exception is that, after a collision, each vessel is bound to stay by the other so long as she needs assistance, irrespective of the question of which vessel is to blame for the collision (see Mer. Ship. Act, 1873, § 16), whereas in Italy, it being the legal duty of a vessel to render salvage services under this section, a deviation necessary for the purpose could not vitiate policies of insurance or contracts of affreightment.

121. The captain of a ship which has rendered salvage services to another vessel has a right to be repaid for all damages sustained (in rendering it).

If the salvage was rendered with risk of the ship or men, there will be besides an award corresponding (to the risk); and which cannot exceed one-tenth of the value of the property salved.

There is a privilege on ship, freight and cargo for the damages, as also for the award mentioned above, which has priority after Judicial charges and before other privileges allowed by Commercial Law.

See C. C., Arts 671 (2), 673 (2), 675 (2).

The first paragraph is in accordance with English Law (Mer. Ship. Act, 1854, § 458; *The De Bay*, 8 App. Cas. 559). But in England there is no limit as to

the ratio of salvage remuneration to the value of property salvaged, except that in the extreme case of derelict it is rarely more than one-half. The lien for salvage reward ranks above all claims on the property prior in date to the salvage (Maude & Pollock, 4th Ed., 652).

122. In case of wreck or other disaster befalling any ship on the coast of the Realm, assistance for the shipwrecked persons will be provided by the port officials. Any other local authority must come and assist the Maritime authority.

Failing the Maritime authority or port deputies, it is the province of the Syndic of the place to make the first and necessary arrangements.

The authority who undertakes the salvage has power to require (the assistance of) the national forces and the services of any individual.

Cf. Mer. Ship. Act, 1854, §§ 441, 442, 445.

123. In the absence of the captain, owners, or insurers of the ship and cargo, or their legally authorised agents, the carrying out of the salvage and the arrangements for the preservation of the property which is wrecked, falls exclusively on the Maritime authority.

124. If the vessel be of a foreign flag, the port officer will at once inform the Consular agent of the nation to which the ship belongs, and then, if required, shall give up the superintendence of the salvage, limiting himself to a tender of his assistance when required.

125. Whoever has received or recovered property from a shipwreck or disaster of the sea, must immediately deliver it to the Maritime or Consular authority, or, failing them, to the local authority or other person who is superintending the salvage operations. Such persons have a right to be repaid their expenses and to a reward for the labour of recovery (the property).

Cf. Mer. Ship. Act, 1854, §§ 450, 458.

126. The reward of persons assisting in the salvage, and of those who have supplied the means of towing or

warping, engines, rigging, and tools, will be regulated by the authority pointed out in Arts. 14, 15, and 16, having regard to the value of the property salvaged, the promptness with which the service was rendered, and the risk incurred in carrying out the salvage.

In England, jurisdiction in salvage cases, when the value of the property salvaged does not exceed £1,000, is given to two Justices of the Peace (Mer. Ship. Act, 1854, § 460; Mer. Ship. Act, 1862, § 49), and when the amount claimed does not exceed £300, or the property salvaged £1,000, to County Courts having Admiralty Jurisdiction (31 & 32 Vict., c. 71, § 3), and in all other cases to the High Court of Admiralty, now the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and in Ireland, and to the Court of Session in Scotland (Mer. Ship. Act, 1854, § 460; Mer. Ship. Act, 1862, § 51).

127. No agreement or promise of reward for salvage assistance, whether of ship, lives, or merchandise, is binding if made on the high seas, or at the moment of the disaster.

A salvage agreement is a valid contract by English Law and can be sued upon in British Courts, but the Court in the exercise of its Equitable jurisdiction can set aside the agreement, on the ground of fraud, extortion, or duress (Maude & Pollock, 4th Ed., p. 647).

128. The crew are always bound to work to save the ship, her apparel, and cargo.

See *Code of Commerce*, ante, Arts. 535, 536, 544.

In England a seaman's claim for wages is barred if he does not exert himself to the utmost to save ship, cargo, and stores (Mer. Ship. Act, 1854, § 183).

129. In the case in which the salvage is carried on by the officials of the Maritime authority, if an advance of money is urgently needed, it will be furnished in the manner prescribed by the regulations.

130. The port officials who superintend the salvage have power to put up for sale merchandise and other articles which cannot be preserved, or the preservation of which would occasion heavy expenses.

They may order the sale of the whole or a part of the other articles which are salvaged, when such an expedient is necessary to repay money advanced under the preceding

article, to satisfy salvage claims and to provide board for the crew, and the expenses of sending them home, and to pay the travelling expenses of the port employés.

Cf. Mer. Ship. Act, 1854, §§ 453, 469.

131. When the salvage operations are complete, the captain of the port will, by public advertisements, call on those interested to prove their rights to the delivery of the property salvaged. When one year has elapsed from the publication of the notices without persons proving their right to the salvaged goods, the captain of the port will cause them to be sold, and forward the proceeds to the funds of the Seamen's Bank\* for the account of whom it may concern.

Cf. Mer. Ship. Act, 1854, §§ 452, 469, 475. If the owners of the property do not appear, the property is sold by order of the Court, and the salvors paid out of the proceeds.

132. On the lapse of five years from the publication of the advertisements without anyone having made a claim, or if the claims which have been made have been rejected by a Judicial sentence or *summary judgment*, the proceeds of the sale are turned over to the public exchequer.

In Great Britain one year (Mer. Ship. Act, 1854, §§ 471, 475; Mer. Ship. Act, 1862, § 53).

133. The following (debts) have privileged claims, in the order specified, against the proceeds of the sale of ship and cargo :—

(1.) The expenses of the sale.

(2.) The expenses of salving and guarding the shipwrecked property, including the remuneration of the persons assisting in the salvage and the travelling expenses of the port employés.

The board of the captain and crew, and their travelling expenses home, and the wages of the crew, have a privileged claim against the residue of ship and freight; and after-

\* See Art. 151, *post*.

wards the privileged debts in the terms of the Commercial Law.

See *Code of Commerce*, Arts. 671 (2), 673 (2, 3), 675 (2, 4—7).

Cf. *Mer. Ship. Act*, 1854, §§ 469, 475.

134. Any person who falls in with a derelict ship on the high seas and succeeds in bringing her safely into a port of the Realm, must make a deposition of the facts to the Maritime authority within 24 hours of his arrival. If the recovery of the ship took place out of sight of land, the finders have a right, in addition to the repayment of their expenses, to one-eighth part of the value of the ship and cargo salvaged.

If, on the other hand, the ship was found in sight of land, the person who salvages her has a right to be repaid his expenses, and to an award, as laid down in Art. 121.

There is no difference in the principle of salvage of a derelict and ordinary salvage services in England, but the former are more highly remunerated, generally from one-third to one-half of the value being given by English Courts; *ergo*, if a derelict is picked up in the Mediterranean, it is obviously to the advantage of the salvors to take her to Malta or Gibraltar, rather than into an Italian port.

135. Merchandise, rigging, clothes, valuables, and other articles of unknown ownership, found on the coasts of the Realm at sea, flotsam, lagan, or jetsam (*a galla, sott'acqua, o sulla spiaggia*), or in the harbours, basins, waterways, and canals, unless their value is less than five *lire* (four shillings), must, within twenty-four hours, be declared by the finders to the local Maritime authority, or else to the Syndic. The finders of any of the above articles who, within the limited time before mentioned, have put them in a place of safety and declared them, have a right, in addition to the repayment of the expenses incurred in recovering them, to a reward equal to a one-third part of the value of the things which are salvaged, if they were flotsam or lagan when found, and calculated in accordance with Art. 718 of the Civil Code if they were jetsam, on the shore, slips, or moles of

the place where found, or if they are cetaceans,\* washed ashore, the property in which belongs to the State.

Cf. Mer. Ship. Act, 1854, § 450.

136. In the cases mentioned in the two preceding Articles, the captain of the port will make provision for the taking charge of, and for the guardianship and sale of, the goods salvaged, and for the publication of the advertisements, in accordance with Articles 130 and 131.

Whenever the residue of the goods recovered is not claimed by those to whom they belong within the term of five years in the case provided for in Art. 134, and within one year in the case provided for in Art. 135; or if, when made, the claims are rejected by a Judicial decree or *summary judgment*, the said residue belongs to the finder.†

137. If a ship is sunk without shewing any trace above water, the captain of the port of the maritime district in which the disaster has occurred will at once publish a notice of the circumstance.

When the owners and persons interested in the ship or cargo do not, within two months from the date of the advertisement, come forward and declare their intention of undertaking the salvage, or, having appeared, allow four months to elapse without taking the salvage operations in hand, or, after taking them in hand, abandon them for a term of four months, running from the day on which they were in a position to continue them, the sunken goods are deemed to be abandoned and enure to the benefit of the State, saving the provisions of Arts. 174 and 176.

\* In England, Royal fish, which apparently include "Sturgeons, grampuses, whales, porpoises, dolphins, riggs, and graspes, and generally whatsoever other fish have in themselves great and immense size and fat," belong to the Crown and its grantees. See *In the matter of a whale*, 2 Hagg. 442.

† In England the residue would belong to the Crown or its grantee, and in the former case would be paid into the Consolidated Fund (See Mer. Ship. Act, 1854, §§ 471, 475; 43 & 44 Vict., c. 22, § 2).



138. In the case provided for by Arts. 134 and 135, the crew of a ship which finds goods which are abandoned or derelict share in the award given to the ship in the following manner :—

If the crew are engaged on shares (*a parte*) the award will be treated as a profit of the voyage and apportioned in the same shares.

If the crew are engaged by the month or by the run, half of the award belongs to the owners (*armatori*) and the other half will be apportioned amongst the crew in proportion to their respective wages.

Whenever the salvage operations lengthen the voyage, a person shipped by the run has, in addition, a right to an increase of pay in accordance with Commercial Law.

See *Code of Commerce*, Art. 532, *ante*.

Apportionment in English law is made by the Court or Receiver of Wreck, having regard to the special circumstances of each case (Mer. Ship. Act, 1854, § 467), *e.g.*, where the ship itself is the principal salvor, as in the case of an ocean towage of a broken-down steamer, the owners will get from one-half to two-thirds of the total amount, the master a lump sum, and the residue divided amongst the crew in accordance with their ratings, giving sometimes a double share to those who have been specially active.

F. W. RAIKES.

#### IV.—TRAFALGAR SQUARE.

IT may sound somewhat paradoxical, but it is nevertheless the truth, that the very worst place in which to obtain a clear notion of the existing state of the Law in any one of its various branches, is the Lower House of the British Legislature. In the House of Lords, where the atmosphere is less charged with the turbulent elements of party strife, Legal luminaries of opposite political confessions are not unfrequently to be found rubbing shoulders. But in the Commons the case is altogether different. The condition

of things there, is, as Mr. Jesse Collings humorously described it in the course of the famous Trafalgar Square Debate, "After hearing my honourable and learned friend, the member for Hackney, I thought he must be right, but when the reply came from the Home Secretary, then I thought he must be right. This was the bewilderment."\* As a matter of fact, the House, in refusing the enquiry asked for by Sir Charles Russell, settled nothing but that the authorities were, in the circumstances, justified in the course they pursued with regard to the exclusion of the public from Trafalgar Square on the 13th and 20th of November, leaving the solution of that extremely important question, the Right of Public Meeting, untouched. Perhaps, after all, it does not matter much that Parliament should have come to no decision upon this latter point, seeing that any mere Resolution of the House would have had no binding effect upon the Tribunals of this country. A Judicial and authoritative decision could, however,

\* It is only fair to quote in this connection Lord Coleridge's reply, at the Lambeth Palace Meeting of the Church of England Temperance Society, on April 24th: "I take the freedom to deny that lawyers, when they are not advocates, when they are speaking as Members of Parliament, and as friends to other friends, I deny that they make statements of the law in the truth and accuracy of which they do not believe. Like all other people, lawyers make mistakes. Like all other people, lawyers are not gifted with omniscience, and, therefore, an opinion given by a lawyer may turn out to be mistaken, but I do not think—and I have some experience of the law—that, taken apart from the duty of the advocate, when that duty is to present one side of the question and not the other, when the duty of the advocate is not upon them, and when they are asked to give to other persons the results of their experience, I deny absolutely that they say that which they do not honestly at the time believe to be true" (*C. E. T. S. Record*). This is, in reality, no answer to Mr. Jesse Collings, because he never asserted that lawyers stated what they believed to be untrue. His complaint was at the bewilderment suffered by the lay mind when, as was invariably the case in the course of party discussions in which legal questions arose, lawyers were found on both sides supporting, by forensic argument, the views of the party to which they belonged.

undoubtedly have been obtained had the self-constituted patriots, Graham and Burns or their advisers, had the courage of testing the abstract legality of their action at their trial, which had taken place in the previous January.

At that trial it was expected that two points would have been raised by the Defence, neither of which, so far as we are aware, has ever been the subject of direct Judicial decision, viz., (1) the Right of public meeting in Trafalgar Square; (2) the Right to assert that right by force, if the Police tried to prevent its exercise. It will, of course, be readily noticed that if the first claim is not asserted, the second does not arise. The defendants' advisers on that occasion contented themselves with tendering evidence to shew that meetings had been held in Trafalgar Square in spite of opposition by the authorities, to which, very properly, the Attorney-General objected. If the defendants had been as genuinely zealous in guarding public rights as they professed to be, no more favourable opportunity could have been afforded for vindicating their assertion of those rights. The evidence should have been pressed, and the presiding Judge should have been asked to reserve the points. The defendants, however, deliberately evaded the question. Not only was the evidence not pressed, but the points were wholly abandoned, and with them, necessarily, the opportunity was let slip of testing the Judge's ruling that there was no such thing as a Right of Public Meeting known to the Law. His ruling, indeed, the question not having arisen, was a mere *obiter dictum*, based upon the cases of *Horner v. Cadman*, 55 L.J. M.C. 110; *Bailey v. Williamson*, 42 L.J. M.C. 49; and *De Morgan v. Metropolitan Board of Works*, L.R. 5 Q.B.D. 155, which had been cited by the Attorney-General. But these cases, we submit, with the greatest deference, are no authorities in support of the above proposition. In *Horner v. Cadman* the appellant was convicted under the Highway Act, 1835

(5 & 6 Will. IV., c. 50, s. 72), for obstructing the Highway. The case finds that he marched into the Bull Ring at Sedgley at the head of a band, took up his position there, addressed a crowd for an hour and a half, during which period *no person could, without considerable inconvenience and danger*, have either walked or driven across that part of the highway, where the appellant and his band and the crowd were stationed. *Bailey v. Williamson* merely decided that there was no right to address a public meeting in the Royal Parks, for, even assuming that such a right had existed prior to the passing of the Parks and Gardens Act in 1872 (an Act which does not apply to Trafalgar Square), it was not included in the rights reserved by that Act so as to render invalid a restrictive Bye-Law, for the Act specifically provided for the making of bye-laws as to addresses. *De Morgan v. Metropolitan Board of Works* was the case of a meeting on Clapham Common, the soil of which was in the Lord of the Manor, and which was subject to private rights of pasturage and perhaps of way. All that the Court held in that case was that there was no public right to go and hold meetings there ; that the Common was by Act of Parliament vested in the Board of Works, and “dedicated to and for the use and recreation of the public as an open and unenclosed space for ever,” and that a bye-law was valid which prohibited the delivery of any public speech, &c., except with the written permission of the Board, and on such parts of the Common and at such times as might be by such written permission directed and sanctioned.

Had the question of the Right of Public Meeting been taken and reserved, we are strongly inclined to think, as has been already indicated, that it would have been decided in favour of the defendants. In our opinion, it would be difficult, if not impossible, to maintain, upon the present state of the authorities, a negative answer to the general question, “Is there such a thing as a Constitutional and

Legal right of public meeting?" We do not believe that upon the most minute examination of the cases, whether they be cases of obstruction of Highways or of unlawful Assemblies, a single sentence is to be found in which the Judges of this country have questioned the right of meeting in a public place. We have already referred to three of the leading cases regarding Obstruction; we will now glance at some of those in which the question of unlawful assembly arose. In *Reg. v. Fursey*, 6 C. & P. 81, which was a case where a person was charged with stabbing a constable, the meeting took place on a vacant space of ground adjacent to the west side of Coldbath Fields Prison. A notice had been issued by the Secretary of State that the meeting was dangerous to the public peace and illegal, but without denying the right of the public to hold a meeting in that particular place, and the question left to the jury was whether the meeting was illegal or not. In the course of the summing up it was never suggested that the meeting was illegal by reason of the place in which it was held. The same remark applies to the observations of the Judges in *Reg. v. Hunt*, 3 B. & Ald. 566 (assembly held near St. Peter's Church, Manchester), *O'Kelly v. Harvey*, 10 L.R. (Ir.) 285 (assembly at Brookeborough, in the County of Fermanagh), and in *Redford v. Birley*, 3 Starkie 76. In the case last cited, Holroyd, J., said, in his charge to the jury, referring to the Lord George Gordon Riots, in 1780, "Lord George Gordon called an immense number of persons in St. George's Fields. They were called for an ostensibly lawful purpose; and there was of itself nothing further meant or intended than to petition Parliament. Lord George Gordon went up with their petition to the House of Commons and they accompanied him there. So far, nothing was amiss." He then went on to speak of the meeting at Spitalfields, observing, "There the meeting was ostensibly proper, but the con-

sequences were mischievous." Upon a motion for a new trial, Abbott, C.J., said: "We must look at the real object of the meeting, for it is evident that such a meeting could not be held at all, if they did not at least take care to hold forth a legitimate object." In the recent case of *Beatty v. Gillbanks*, 15 Cox C.C., 138 (Salvation Army procession), the Judges recognised the right of assembling in a public hall and marching through the streets. But, perhaps, the strongest Judicial expression of the Right of Public Meeting is that of Baron Alderson so far back as 1839, in his charge to the Grand Jury in *Reg. v. Vincent*, 9 C. & P. 95. "There is no doubt," he said, "that the people of this country have a perfect right to meet for the purpose of stating what are, or even what they consider to be, their grievances. That right they always have had\* and I trust they always will have; but in order to transmit that right unimpaired to posterity it is necessary that it should be regulated by law and restrained by reason."

To establish the right of public meeting it is not, however, necessary that it should be crystallised in a statutory enactment, such as that inserted in the French Constitution of 1791, or confirmed by any decision of our Tribunals, for it reposes upon a much firmer foundation. Such a right is founded upon the elementary principle that "in a free country every man and any number of men have a right to do what they please so long as they do not infringe private rights or break the laws which repress crime and preserve public order." The position of the question is, we think, well summarised by Mr. Blagg at pages 4 and 5 of his recent work,† in the following words: "During the present century, at any rate, the custom of meeting in

\* It may be conceded that in the arbitrary days of Charles II., and for some time after, the Judges were by no means agreed as to whether a public meeting could be held without the license of some public functionary.

† *The Law as to Public Meetings*, by J. W. BLAGG. Butterworth. 1888.

public, in a peaceable manner, to give open expression to popular demands, and to discuss grievances, has been very general, and has come to be recognised as an important part of the British Constitution in its present form. It may be urged that Parliament, or the House of Commons, is the proper arena for the discussion of grievances. But the machinery of Parliament is apt to work slowly, and, until quite recently, the House of Commons has not adequately represented even the male inhabitants of the country. Public meetings have, therefore, from the point of view of considerable sections of the nation, been an absolute political necessity. This subject of public meeting has been discussed by Professor Dicey in his learned work on the 'Law of the Constitution.' The conclusion at which he arrives is, that if A., B., and C. have each a right to be in a certain place, ten thousand other persons, or any larger number, have also a right to be there, provided, of course, that they do not meet under such circumstances as to cause alarm in the minds of rational persons in the neighbourhood, or assemble for an unlawful object, or commit any other offence known to the law. This right of meeting, "so far as it exists, seems to be not merely a constitutional, but a strictly legal right." Mr. Blagg then goes on to make an observation to which we cannot assent. He says, "If, therefore, Mr. Justice Charles is correctly reported as having said in *Reg. v. Graham and Burns* (23 L.J. Notes 45, unreported cases); 'that he could find no warrant for considering that there was any right to hold public meetings in Trafalgar Square or indeed in any other public place,' it is submitted that the remark applies only to highways and places *ejusdem generis*." We do not agree in the distinction that is here drawn between a highway or any other public place. Primarily, no doubt, a highway is to be used for the purposes of passing and repassing, of travelling and conveyance of

goods and other minor objects incidental thereto, but we think that the right of public meeting upon a highway may be legally maintained, subject to the limitation that it is not a source of danger or inconvenience to a portion of the public who have a right to use the highway.

The House of Commons is not, as we have said, a well-spring from which flow clear notions of law. Still less, perhaps, is it favourable for acquiring full and accurate information regarding any matter the elucidation of which requires investigation of an antiquarian character. The perfunctory discussion of the Rights of the Crown in Trafalgar Square may be taken as a fair sample of the indisposition of the House to probe far below the surface for the purpose of solving questions which require researches into history, even when that history is principally contained in the records of the proceedings of the House itself. Such being the case, and believing that the interest in this question is far from being exhausted, we propose to lay before our readers the information we have collected upon the subject.

First let us see what the older histories tell us :—"North-west of Charing Cross" (the Cross was a short distance south of the present Nelson Monument) "is still the remnant of ancient buildings denominated the Meuse (from Mew—the term among falconers for moulting or casting feathers). It appears to be a place of considerable antiquity, by its being employed for the accommodation of the King's falconers and hawks so early as the first of Richard II., in the year 1377. But in the twenty-eighth of Henry VIII., anno 1537, the King's stables at Lomesbury, corruptly called Bloomsbury, near High Holborn, being destroyed by fire, the hawks were removed and the Meuse enlarged and fitted up for the reception of his carriages and horses, where they have been kept ever since. On the buildings being greatly decayed by devouring time, the



north side thereof was rebuilt in the year 1732 in a very magnificent manner by his present Majesty.

“King James I., in 1606, gave to the inhabitants of this parish an acre of ground on the north side of the Meuse, lying between St. Martin’s Lane, Castle Street, Duke Street, and Hemming’s Row for the common burial ground, on the west side of which is built Dr. Tennison’s School and Library and the parish workhouse for the reception of the poor.

“In the year 1699 King William III. granted to the inhabitants of this parish a convenient passage out of the Spring Gardens into St. James’s Park, they keeping the pavement in repair.”

The foregoing is an extract from Maitland’s *History of London*, published by Samuel Richardson in 1739.

No mention of any change having taken place in the “ancient buildings denominated the Meuse,” is made in *London and its Environs*, 1756, by Pennant in his *Topographical Account of London*, 1790, by Noorthouck, in his *History of London*, 1773 (where he says, on the *North* side of Charing Cross is the King’s Mews), or Malcolm in his *Londinium Redivivum*, published in 1807. Coming now to later writers, who have had the advantage of the researches of their predecessors, we find that Cunningham, Timbs, Thornbury, Walford, Hare, and Loftie substantiate the account given above. Mr. Loftie adds that “Dwellings for the families of the officials and menials of the Court were erected in the Mews, which occupied what is now the open space of Trafalgar Square. . . . Where Nelson’s column now stands there was a row of houses and the King’s Mews behind.” Mr. Austin Dobson, writing in the *English Illustrated Magazine* for April, 1884, says:—

“Fronting Northumberland House (the site of the present Northumberland Avenue), a little to the left . . . stood . . . the older Golden Cross. From the

Golden Cross, houses extended northward to St. Martin's Church. Trafalgar Square, and the place now occupied by the National Gallery, was covered as far back as Hemming's Row by buildings surrounding the King's Royal Mews.

. . . . Here M. St. Antoine taught the noble art of horsemanship. . . . It continued to be used for stabling till 1824, when the Royal stud, gilt coach, and other paraphernalia were transferred to Pimlico. In 1830 it served as a temporary shelter to Mr. Cross's menagerie, then ousted from Exeter Change. . . . At the Mews-gate stood a convivial house of call, celebrated in song by 'bright, broken Maginn.' . . . About 1830 the ground was cleared for Trafalgar Square, and the C'ribbee Islands and the rookeries were 'blotted from the things that be.'"

Turning now to ancient maps, what do we find? Ralph Aggas's Map of London, published in 1560, shews the "Mewse" covering the whole of the ground now occupied by Trafalgar Square, and the roads surrounding it, with a semi-circular row of houses running along the south side of it, just to the north of the Cross. Stowe's *London* (Strype's Edition), 1729, contains a map upon which the Great Mewse (Royal Mewse) is indicated as being to the North-West of Charing Cross, and the Green Mewse to the North of that. Rocque's Survey (1746) places the Royal Mewse to the North-West of Charing Cross. Another edition, published by Pine, and in the same year, coincides with this, and fixes the Green Mewse to the north of the Royal Mewse. It does not appear that any alteration had taken place in the interval between the above date and the publication of the last edition of Horwood's Plan of London in 1813. Even down to the year 1826, the date when the Plan attached to the Fifth Report of the Commissioners of Woods and Forests was ordered by the House of Commons to be published, we still find the Royal Stables and other buildings on the site of Trafalgar Square.

We now come to the Parliamentary history of this interesting spot.

In 1813, the first statute (53 Geo. III., c. 121) relating to Trafalgar Square passed into Law. It was intituled an Act for making a more convenient communication from Mary-le-bone Park (afterwards Regent's Park) and the Northern Parts of the Metropolis in the Parish of St. Mary-le-bone to Charing Cross, within the Liberty of Westminster, and for making a more convenient sewage for the same. It recited that ". . . it would be a great accommodation to the public," if, among other things, "provision were made for widening the East End of Pall Mall and for continuing the same Eastward by a new street into St. Martin's Lane, terminating at the Portico of St. Martin's Church, and for widening Cockspur Street from the South End of the Haymarket to Charing Cross; and for forming an *Open Square* (the italics are ours) in the King's Mews, opposite Charing Cross," &c. It then went on to enact that the Commissioners of Woods and Forests were to be commissioners for carrying out the Act; empowered them to sell, lease, or exchange Crown property not wanted in the lines of improvement, and required them to make annual Reports to the Treasury as to the progress in making improvements, and to offer suggestions for further carrying out the Act, and to render accounts to the Treasury of monies raised or received by them for executing the same. This was but one of a series of Acts ranging over the years 1813 to 1829, which enabled the Commissioners to carry out various schemes for the improvement of the Metropolis in the vicinity of Charing Cross, the Strand, and other places.\* In the Appendix to the second Report of the Commissioners of Woods and Forests, made under the authority of

\* See 53 Geo. III., c. 121; 54 Geo. III., c. 70; 57 Geo. III., c. 24; 1 Geo. IV., c. 71; 7 Geo. IV., c. 77; 9 Geo. IV., c. 70; 10 Geo. IV., c. 50; 10 Geo. IV., c. 61.

the Act of 1813, and published in 1816, are given Mr. Nash's plan and estimates for the continuation of Pall Mall to the front of St. Martin's Church, and for widening Cockspur Street from the Haymarket to Charing Cross; and here let us pause to remark that not only was the greater part of the property taken for these alterations described in that appendix as belonging to the Crown, but the schedules to that and other Acts under which the remaining property was purchased contain forms of conveyance which prove that every scrap of land purchased was purchased on behalf of the Crown. In 1819, the third Report of the Commissioners was published. It states that the continuation of Pall Mall to St. Martin's Church had not then been commenced, alleging as a reason for the delay that the Crown property leases would fall in at Michaelmas next. From the Fourth Report, published in 1823, we learn that the Treasury sanctioned Nash's plan and estimates, that the Public Establishments still occupied a considerable part of the Lower, *i.e.*, the King's Mews, and that when proper accommodation could be found for them the improvements would proceed. In the following paragraph the Upper or Green Mews is spoken of, but the tracing of its history is beyond the scope of the present enquiry.\* In the Appendix to this Report a schedule is printed, particularising the leases of Messuages and Buildings belonging to the Crown which were within the lines of the proposed improvements. The Fifth Report (1826) suggests that there should be a deviation from the original plans. It states that when the line of communication between Pall Mall and Portland Place was completed and as soon as the Commissioners were put in possession of the Lower Mews at Charing Cross, they took measures to continue Pall Mall into St. Martin's Lane terminating at the Portico, of St. Martin's Church, and forming an open area in front of the King's Mews. It then appeared that the unequal lengths

of the two sides of the open area proposed by the original plan would be a deformity peculiarly striking in the approach from Whitehall and that a much larger space than was at first designed ought to be left open, and the west-end of the Strand considerably widened. The plans shewing the proposed alterations are appended to the Report. These plans and Mr. Nash's estimates were submitted to the Treasury and approved, and a Bill was submitted to Parliament to carry them out. In introducing this Bill Mr. Arbuthnot said: "It was intended to purchase that tract of ground which joined to the present King's Mews at Charing Cross and extended to St. Martin's Lane. . . . If permission should be granted to purchase that tract of buildings between St. Martin's Lane and the Mews, it was contemplated that a large splendid quadrangle should be erected, the west side of which would be formed by the College of Physicians and the Union Club House, the east side would correspond with that already existing; namely, the grand portico of St. Martin's Church; and on the northern side a new line of buildings would be erected; the effect of which arrangement would be to throw open to those in Pall Mall a full view of the magnificent portico of the church. He (Mr. Arbuthnot) could certainly wish that this quadrangle should contain a gallery for our national paintings and statues. . . . The south side of the quadrangle would be open to Charing Cross. The extent of it would be 500 feet from the statue at Charing Cross to the present stables. He would not say a word as to the expense which would be incurred by these improvements; and no doubt it would be satisfactory to the House to learn, that, unless the building of a Royal Academy or National Gallery on the site to which he had already alluded should be determined on (in which case it would be necessary to come to the House for a grant), he should not have to apply to the House for a shilling. . . . By the

exchange of Crown lands in some instances, and the sale of them in others, the Department with which he was connected would be enabled to meet the greatest part of the expense. It would be necessary, should the House approve of his plan, that in the Bill which he would introduce, power should be given to borrow a sum of money on mortgage of a part of the New Street ; but this, it should be observed, would be only a continuation of the powers of an Act already passed for the erection of buildings in Regent Street." \* Leave was given to bring in the Bill and it passed in the same Session.

From the speech above quoted it is clear how the money for laying out Trafalgar Square was to be provided. It would also appear that at that time it was in contemplation to erect the National Gallery or the Royal Academy in the centre of the Square, but these proposals were, as we know, abandoned. This Act of 1826 recites "that it would be a great accommodation to the public if the Commissioners were authorised to make and form Pall Mall East from the King's Mews to St. Martin's Church, and thence in a South-Easterly direction on the south side of the said church to the north side of the Strand, and to form an open place or square opposite Charing Cross."

To return now to the Reports: the 6th, 7th, 8th, and 9th Reports only shew the number of buildings purchased and the expenditure for improvements by virtue of the increased powers of the Commissioners. It is said that the Square received the name of Trafalgar in accordance with a wish expressed by William IV. in 1830, but the first reference to it under that name in the Reports appears in the 10th, published in 1833. That Report speaks of the reservation of a plot of ground on the North side as a site for the National Gallery and for the use of the Royal

\* *Hansard* for 1826, Vol. XV., p. 62, Charing Cross Improvement Bill.

Academy. It also records the granting by the Commissioners of plots of ground with messuages thereon on the East and West sides of Trafalgar Square. The Reports from 1834 to 1837 shew the progress of improvements and expenditure, those of 1838-9 are silent, but the 17th Report; published in 1840, contains a Street account at the Bank of England on account of the improvements at Charing Cross, from which we learn that the expenditure amounted to £874,010 „ 2s. In this same year, also, an important Return was presented to Parliament by the Commissioners, setting forth the arrangements entered into between them and the Committee for erecting the Nelson Monument; also a statement of the plan approved, as sanctioned by the Commissioners, for laying out the vacant space in front of the National Gallery, “and whether it will be all or in part open to the Public.” This Return goes on to describe the appropriation of a portion of the Square as a site for the Monument, and details the plans for lowering the whole space in front of the National Gallery to the level of the footway leading from Cockspur Street to the Strand. “The Square will be accessible on the North by steps and on the South by openings to be left between the posts in front of Nelson’s Column. The whole area of square not occupied by that Monument to be flagged with stone or laid down with asphalte, and *will be open to and traversable by the public at all hours of the day.* The whole area to be appropriated as a place or square will be in extent, from North to South 250 feet, and from East to West 340 feet.. Site of column to occupy space immediately connected with footway leading from Cockspur Street to Strand, of 82 feet square.”\* In 1840, also, a Select Committee moved for by Mr. G. Knight, to enquire into the plan sanctioned by the Commissioners of Woods and Forests for laying out the vacant space in

\* Parliamentary Paper No. 381.

front of the National Gallery, was sanctioned.\* Attention should be directed to the evidence given before this Committee.

Mr. Charles Harrison, in a letter to the *Times* of March 10th, strenuously asserts that the soil upon which Trafalgar Square now stands was never a portion of the hereditary estates of Her Majesty. "In fact," he says, "only a very small portion, on the extreme western half of the present square, ever belonged to the Crown, and formed a small yard in front of the Royal Mews, or stable building, which is now the western half of the National Gallery, with the large and principal stable-yard in the rear, and is now the yard of the present barracks." Against this assertion may fairly be placed the sworn testimony of one who undoubtedly had far greater opportunities for obtaining accurate information upon this matter, and whose statement, made forty-four years before the Trafalgar Square controversy arose, at a time when the facts must have been fresh in his memory, should probably be taken to outweigh that of the gentleman from whom Sir Charles Russell received his "instructions." Before the Select Committee of 1840 above referred to, Alexander Milne, one of the Commissioners of Woods and Forests, was examined, and in the course of his evidence he gave the following answers:—

"Is the ground in front of the National Gallery the property of the Crown?—Yes.

"How long has it been so?—The greatest part was the site of the old King's Mews; the rest was purchased under the Regent Street and Charing Cross Improvement Acts.

"Do you recollect at what expense?—I cannot tell; it is impossible to apportion the expense of the area alone; it was in connection with other property between St. Martin's Church and the Union Club House.



“ It was at a considerable expense, was it not ?—  
Certainly.

“ Was that private property before the improvements ?—  
No, the greater part belonged to the Crown ; there was  
some property to buy up.”

No additional information is to be gained from a study of the Reports of the Commissioners issued between the years 1841 and 1844, but in the year last named the Trafalgar Square Act, 7 & 8 Vict., c. 60, was passed. That Act, when rightly read, it is submitted, clears up two delusions. In the course of the discussion which took place, sanction was sometimes given to the view that Trafalgar Square was the private property of Her Majesty. Nothing can be more mistaken than that view, as will be seen on contrasting that Statute with the 39 & 40 Geo. III., c. 88, enabling the Sovereign to acquire landed property by purchase, and to dispose of it by deed or will like any private person. On the other hand, it was vigorously maintained that the soil of Trafalgar Square, prior to the passing of the Act, was public property which had never been vested in Her Majesty as part of the Hereditary Estates of the Crown. The fallacy of this view has, we trust, been sufficiently exposed by the references which have been made to historical and Parliamentary records. But there is another contention which remains to be disposed of. It has been endeavoured to construct an elaborate argument upon the Civil List Act, and to deduce therefrom that the whole of the Hereditary Estates of the Crown were surrendered to Parliament upon the accession of each sovereign, in exchange for a fixed revenue granted by it, and reference was made to an Act of 1829 as bearing out that proposition to the fullest possible extent. On turning to the Statute Book, it will be found that two statutes were passed in that year which are pertinent to the question under consideration. The first of them, 10 Geo. IV., c. 50, was not referred to by those who uphold this

argument, possibly for the very obvious reason that it is absolutely destructive of their case. That Statute is a consolidation statute, collecting together and arranging in systematic form, with amendments, those previous statutes which dealt with the management of Crown Lands, and Crown Land Revenue, and defining the duties of the Commissioners of Woods and Forests in relation thereto. It starts with recitals that the Hereditary Estates of the Crown are by 1 Anne, St. I., s. 7, rendered inalienable except for terms and estates not exceeding three lives, or thirty-one years, or in some cases fifty years, that the rents and profits of such estates were, after defraying the expenses incurred in the collection and management of the said revenues, to be paid into the Consolidated Fund under the Civil List Act, 1 Geo: IV., c. 1; that certain sums of money had been advanced out of the Consolidated Fund under borrowing powers contained in certain specified statutes which it thereby repealed, but it contains a distinct reservation that nothing therein contained should operate to repeal those Street Improvement Acts under which Trafalgar Square was made (section 129). By its eighth section, the lands, revenues, possessions, and tenements of the Crown are placed under the management of Commissioners, who are to be appointed by His Majesty, his heirs, and successors, by his or their Letters Patent. The Commissioners are by s. 22 empowered to grant leases for 31 years, but not of the Royal Parks, Forests, or Chases (section 25). The rents of such leases are to be made payable to the Crown, free from taxes and assessments (section 27). Power is given by sections 34 and 42 to the Commissioners to sell and exchange possessions of the Crown to which the Act relates, saving the Royal Parks, &c.; and by section 52 to purchase lands on behalf of the Crown. The Commissioners are required by section 125 to report annually to the King and Parliament as to sales, exchanges, and leases

made by them. And, finally, the Schedule gives the forms of instruments in which these sales, &c., are to be made, all of which recite that the Commissioners are acting on behalf of His Majesty, and under the authority of some Act of Parliament empowering them to enter into such transactions. How, then, is this statute compatible with the assertion that the Hereditary possessions of the Crown had been surrendered "to the public" in consideration of a grant to the Crown of a Civil List?\*

The statute upon which so much stress has been laid as confirming the view that the Crown has surrendered its estates is the 10 Geo. IV., c. 61. It is entitled the Metropolitan Improvements, Regent Street, Act, and its form differs in no particular from previous statutes which enabled the Commissioners to borrow money for the purpose of carrying out Street Improvements. By virtue of it, they are enabled to borrow from the Consolidated Fund a sum of £400,000, and it provides that in the event of the Hereditary revenues hereafter reverting to the Crown, it should repay such sum. The Crown has not resumed its Hereditary revenues, and is not likely to do so, seeing that it has been the practice in recent reigns for the Sovereign to surrender the hereditary revenues to Parliament, taking in lieu thereof a Civil List grant.† But we have no hesitation in affirming that there is not a single word in this statute which by any recognised canon of construction can be twisted into a surrender of an inch of the hereditary estates of the Crown, as distinguished from their administration.

\* For further powers of the Commissioners to deal with Crown Lands, see 16 & 17 Vict., c. 56, sec. 5. For a historical retrospect of the Rights of the Crown in Landed Property, *vide* Allen on *The Royal Prerogative*, Lond., 1849, and *The Antiquary*, January—May, 1886, Arts. by Hubert Hall, and S. R. Bird.

† *Id.* 1 & 2 Vict., c. 2.

Now let us look at the wording of the recital in the Trafalgar Square Act itself: "Whereas the Queen's most Excellent Majesty, in right of Her Crown, is seised to Herself, Her Heirs, and Successors, of the Place or Square called Trafalgar Square, in the Parish of Saint-Martins-in-the-fields in the City of Westminster and County of Middlesex.; And whereas such place or square has recently been formed, laid out, embellished, and ornamented at the Public Expense; And whereas upwards of Twenty Thousand Pounds have been collected by private subscription, and expended towards the Erection of a Column in the said Square to commemorate the public service of the late Vice-Admiral Lord Viscount Nelson; and it is expedient that provision should be made for the care and preservation thereof, and for the ornamental and other works, matters and things erected upon or around the same, as hereinafter mentioned":—The meaning of this is surely quite plain. Trafalgar Square was, before the Act, a portion of the Hereditary estates of the Crown. It had been embellished at the Public cost, and a large sum of money had been subscribed by a portion of the public towards the erection of Nelson's Monument. It was deemed a matter of public utility that both the Square and the Monument should be maintained in perpetuity in their then state of repair and preservation, and this Statute was the means adopted for carrying out that desirable end. Hence, the first section provided for the vesting of "Trafalgar Square and all the ornamental and other works, matters, and things now being, or which may hereafter be, placed or erected in, upon, about or around the same," in the Queen, as part and parcel of the Hereditary estates of Her Majesty in right of her Crown. By the second section, "the care, control, management, and regulation" of the Square and the works thereon, are all vested in the Commissioners of Woods, Forests, Land, Revenues, Works and Buildings, who are to lay out monies,

to be provided by Parliament, in keeping them in repair and good order. And the third section placed them under the Police Acts, 10 Geo. IV., c. 44, and 2 & 3 Vict., c. 47.

To continue the history of the Square, it is necessary to mention that the duties which were vested in the Commissioners of Woods and Forests by the above and other Acts relating to the improvement of the Metropolis were transferred in 1851, by the 14 & 15 Vict., c. 42, to a new Body, called Her Majesty's Commissioners of Works and Public Buildings, and in that Body they remain to this day.

One further matter relating to the Square calls for a brief comment. Sir Charles Russell is reported\* to have said "I attach much importance to the Statute of 1854, which placed under the control of the Commissioners of Woods and Forests the Statues situated in the Metropolis to which the public have 'the right of ingress, egress, regress, or thoroughfare,' among which, Trafalgar Square is expressly included. This is practically a statutory admission of the right of the public to enter, leave, and return to that square." Far be it from us to deny "the right of the public to enter, leave, and return to that square." But let us see whether Sir Charles is justified in his contention that such a right has been conferred by that particular statute. On referring to the Act we find that its object is to place public statues within the Metropolitan Police District, not under the control of the Commissioners of Woods and Forests,—for, as we have seen, their duties had already been transferred to a New Body in 1851,—but, under the control of Her Majesty's Commissioners of Works and Public Buildings. By Section 1 of this Act it is declared that Public Statues shall be taken to include all statues mentioned in the Schedule to this Act (the Schedule includes

\* *Times*, March 2, 1888.

Nelson's Column and the Statue of George IV. in Trafalgar Square), *or* which may *hereafter* be erected either wholly or in part within such Public Place as after mentioned. The Statute then defines Public Places as "any Street, Square, Court, or other like place within the Metropolitan Police District into, or upon, or over which there is any right of ingress, egress, and regress, or thoroughfare." It will thus be seen that the Act relates (1) to existing statues erected in certain places scheduled to the Act, whether public or private the Act does not state, and (2) to statues to be in future erected in Public Places coming within a general definition. Two existing statues situate in Trafalgar Square are included in the Schedule to the Act, but we submit that the provisions of the Act and schedule did not and could not, in virtue of their terms, make Trafalgar Square in Law anything which it was not already.

By the foregoing investigation we have endeavoured to establish the propositions that there exists such a Right as the Right of the Public to assemble in a public place, subject always to the paramount necessities of public safety and convenience, that the soil of Trafalgar Square is vested in the Crown, and that it is, as its Parliamentary history shews, to be devoted to public uses and for public purposes. Putting aside the question of User, about which much has been urged on both sides, we can find nothing in the origin or characteristics of the Square which should rightly differentiate it from any other open space into and out of which public highways pass. It is a thoroughfare, and must be kept open as such for the use of the general public passing to and fro, whether on foot and horseback or in private carriages or public vehicles. The duty, then, of the Government is clear. It is, as Sir Henry James, in his luminous and well-reasoned speech in the Commons, defined it, "It is the duty of the Government to see that the public

have the use of the Square, and to so regulate it that the rights of the public are not interfered with."

B. L. MOSELY.

[\*\*\* It may not be out of place to add to our valued contributor's arguments the following points which have strongly suggested themselves to our own mind in the course of the discussions on this question. One is, that some right of Public Meeting must surely be inherent in the Right of Petition, which is an acknowledged Constitutional right of the subject; otherwise we should be brought back to the Passive Obedience of the Stuart Period. The other is, that the position of the Hereditary Estates of the Crown, as administered by Commissioners specially appointed for the purpose, bears some analogy to the Legal position of the Island of Cyprus, as being and remaining an integral part of the Dominions of the Ottoman Porte, Lord of Cyprus, but governed and administered for the Porte by the agents of the British Government.—ED.]

## V.—THE BRITISH NORTH AMERICAN FISHERIES.

WHATEVER may be the fate of the Fisheries Treaty, which was concluded at Washington on the 15th of February, 1888, there can be no doubt that the British Plenipotentiaries abandoned all the material contentions of this country up to the end of last year from the date of the Fisheries Treaty in 1818 between Great Britain and Ireland, on the one hand, and the United States of America on the other. In this matter, our country cannot boast of having obtained a Diplomatic success. The American Plenipotentiaries have practically obtained everything which

they asked, and for which they contended. All the Plenipotentiaries were anxious to arrive at a just, satisfactory, and permanent settlement of a long and irritating dispute, which might, ere long, have plunged the American continent into all the evils and horrors of a fratricidal war. Let us, therefore, try to find out, briefly, how far such a settlement has been reached.

*International Law as to Seas, Gulfs, and Rivers.*—Wheaton, in his *International Law*, lays down, in his chapter on the rights of property, that the Maritime Territorial Jurisdiction of every State extends to the Ports, Harbours, Bays, mouths of Rivers, and the adjacent parts of the sea enclosed by the headlands belonging to the State. He then proceeds to remark that the general usage of nations superadds to this maritime jurisdiction a marine league, or as far as cannon shot will reach from the shore, along the coasts of the State. He also enunciates the doctrine that, within those limits, the rights of property and the territorial jurisdiction of the State are absolute, and exclude those of every other nation. With Wheaton nearly all writers on International Law agree as to the extent, rights, and jurisdiction over Rivers and Seas. In his 178th Section, Wheaton lays down that, although not inhabited or fortified, the term coast included the natural appendages of the Territory which arise out of the water; and in his 179th Section, he states that this exclusive maritime jurisdiction is extended by Great Britain to the Bays called the “King’s chambers,” that is, the portions of the sea cut off by lines drawn from one promontory to another, and that a similar jurisdiction is asserted by the United States over Delaware Bay, and other Bays and Estuaries of their territory. The Modern Law of Nations is opposed to the exercise of these Territorial rights beyond the distance of a marine league. Within recent times, the great civilised nations of the world have shewn a tendency to limit the exercise of



Territorial rights over seas, gulfs and rivers —*e.g.*, Great Britain and France in 1839 as to the fishings adjacent to their respective territories, and the Great European Powers in 1882 as to the North Sea Fisheries. But, irrespective of Treaty rights, the maritime territory of every State extends to the straits and sounds, bounded on both sides of the territory of the same State, when they are so narrow as to be commanded by cannon shot from both shores, and communicating from one sea to another. A maritime country is defended and guarded by the sea as with a rampart. It is protected by the sea as by an immortal wall, and under certain circumstances, by a strong and impenetrable bulwark. Still, I admit that the space required for this defence, or for the exercise of territorial rights of property and jurisdiction —*e.g.*, of fishing or of search—cannot be determined by any principles of International law, and must be determined by the general customs of civilised nations, and by Treaty obligations. Generally speaking, the right over an adjacent sea must be decided by possession, or by Treaties. Puffendorff says that “Every Maritime people at all acquainted with navigation are the lords of the sea, so far as it may be counted as a defence, especially in Ports and other places where there is a convenience of landing. In like manner, the gulfs and channels, or arms of the sea are, according to the regular course, supposed to belong to the People with whose lands they are encompassed.” The right to fish on the main ocean was never, at any time, in dispute between us and the United States. But a right to purchase bait and provisions in the British possessions of North America, in order to prepare for fishing in the Ocean, was denied by us, and is not expressly included in the rights conceded to the United States by the Treaty of 1818. So far as we know anything about the negotiations which preceded that Treaty, such a right must be held to have been deliberately and expressly excluded.

*Rights of Fishery.*—Wheaton, in his 180th Section, states that the right of fishing in the waters adjacent to the coast of any nation, and within its territorial limits—viz., those to which we have already referred—belongs exclusively to the subjects of such nation. By a Convention, in 1839, between Great Britain and France, the rights of fishing were settled as between those two Nations as follows:—

1. To each, exclusive rights from low water mark for three geographical miles from the shores of their respective countries.
2. An exclusive right to France between Cape Carteret and the Point of Monga.
3. Where bays were not wider than ten miles at the mouth, the three miles were to be measured from a straight line drawn from the mouth.
4. Where the width of the bays exceeded ten miles, the three miles were to be measured from straight lines drawn across the bays in the parts nearest the entrance where the width did not exceed ten miles.

Provisions to the same effect as the last two Articles were contained in the Hague Treaty of 1882. In Fishery rights, as they are now recognised, denied, or extended, are involved important and difficult questions of ownership, the right of having war-ships, and the right of trading in certain seas or rivers, and also rights of jurisdiction and property, and the exercise of belligerent rights as against neutrals and enemies, and of searching and seizing ships, seamen, and cargoes of Foreign States. Wheaton, in his 189th section, points out that the right of property and jurisdiction may be exercised over certain portions of the sea up to low water mark as well as over dry land itself, and that the physical and moral power to exclude others therefrom exists to a certain extent—*e.g.*, no belligerent rights can be exercised in Neutral territory—and that, while no wrong is done by the innocent use, *e.g.*, in fishery, of waters washing the shores of a particular State, the right of fishery is generally

appropriated to the subjects of a State within the distance of a marine league of the coast. He there lays down that "this exclusive use is sanctioned by usage and convention, and must be considered as forming part of the positive law of nations."

*Rights of Navigation and Commerce.*—As a general proposition, it may be laid down that the right of navigating the open sea is free to all states and peoples. Rivers, however, such as the Rhine, the Danube, the Mississippi, and the St. Lawrence, have been the subject of Treaties fixing the common rights of mankind, and the rights of the Riparian States. Connected with this general or Conventional right of navigation are related the subordinate, yet important, rights of mooring vessels to the banks of a river, and of lading and unlading cargoes, and of landing in cases of distress, or for other necessary purposes. But with these latter rights I do not here concern myself. In asserting this right of Free Navigation, no countries have been more determined than our own and the United States of America. It appears that there is a sentiment written in deep characters on the heart of mankind, that the ocean is free to all men, and that the rivers belong to all the inhabitants of the adjacent shores. Free Navigation and Free Commerce are mutually intertwined, and are closely connected with Free imports and the Most Favoured Nation Clause as to imports and exports. But they were always the subject of Treaties between foreign nations, by whom Free Navigation and Free Commerce within their own territories were held to be matters for the exclusive determination of the Sovereigns interested. Still, Treaty arrangements do not always shew that the rights conceded by them are not natural rights; for it has often been necessary, or desirable, to establish rules to regulate the exercise of natural rights. The Law of Nations, though intelligible in its general outlines and general

purposes, is not sufficient for the complicated wants of modern navigation and commerce, and hence the navigation of the ocean is itself subjected to Treaty regulations in time of war. "These stipulations," says Wheaton, in his 205th Section, "should be regarded as the spontaneous homage of man to the permanent lawgiver of the universe, by delivering his great works from the artificial shackles and selfish contrivances to which they have been arbitrarily and unjustly subjected." I hope that the time will yet come when the sea, which is the common highway of nations, will be made absolutely free for commerce and intercommunication between all nations, and without any danger of harm or capture, and with the universal approbation and sanction of all the civilised nations of the earth. On the sea, nations can stretch and extend their power over an almost unlimited space, and make it, by means of ships of war and commerce, as much subject to their power and the useful purposes of man as they can make the land itself. They may thus bind the most distant parts of a great Empire as firmly as on the land itself. But the ocean belongs to mankind in general, and so do the rivers and the shores, unless in so far as they are appropriated by some country or countries by the Law of Nations, or by the universal custom of mankind, or by Treaties between particular nations. Nevertheless, it is folly to covet what we cannot possess or hold advantageously, and especially to aim at the gratification of ambition and avarice rather than at the necessities of human life and capacity. For the purposes of navigation, the sea is inexhaustible, and can suffer no damage by its being so employed. With regard to inshore fishing, the condition of things is different, and there is no reason why the inhabitants of the shores of the sea may not justly appropriate and enjoy the fishing adjacent thereto, at all events, to some extent, rather than the inhabitants of some country at a distance.

*The Dispute between Great Britain and the United States is one of Law and Policy.*—The long-standing controversy between Great Britain and the United States of America as to the North Atlantic Fisheries is one of International Law and Policy. I have stated that we had the right of fishing in the waters adjacent to our territory to the extent of three miles from the low-water mark, and that, in all bays, the three miles were to be measured from headland to headland; and secondly, that we were under no obligation to supply bait and other provisions and supplies to enable the Fishermen of the United States to prosecute their Fisheries on the High Sea. On the Newfoundland coasts, there is no doubt that the United States have practically rights of common fishery along with ourselves. The United States, on the other hand, admitted that our rights of exclusive fishery in the North Atlantic, unless where they had such common rights of fishery, extended to the distance of three miles beyond low water mark, except in the case of the great bays with which our Canadian coast is indented at various points; and they claimed that the Canadian dominions were obliged to supply bait and other things necessary to enable their fishermen to prosecute the deep sea fisheries beyond the territories they acknowledged to belong to Canada. As the Fishermen of the United States insisted on exercising the rights thus claimed for them, the Government of the Canadian Dominion seized and condemned several ships and seamen for contravening the laws of the Canadian Dominions. Bitterness and threats of reprisals followed in the United States; and, in the interests of peace, strenuous efforts have lately been made by all the Governments concerned to arrive at a just, peaceful, and permanent solution of the difficulties which had arisen. Before explaining what has been the most recent development of this great dispute, and the arrangements which have lately been made, I propose to give a statement of

the facts arising out of the Treaties and Conventions which have been made between the parties from the year 1783 down to the Convention of 1871.

*Treaty of 1783.*—I do not consider that any claim to the disputed Fisheries can be made out by the United States of America in consequence of the American fisheries having been the common inheritance of the inhabitants of the British colonies along with those of the United States of America. From the date of the independence of the latter, Great Britain and the United States were separate and foreign countries in regard to their International relations, and their rights as against each must be determined by that consideration alone. By secession from Great Britain, the New England States lost their right of fishing in the Territorial waters of the North American Colonies of Britain. Then, by the Treaty of 1783, they had practically conceded to them their claim to equal rights of fishing. After the war of 1812, the Fishery rights under the Treaty of 1783 were never fully acknowledged by Great Britain, and bitter and acrimonious disputes consequently broke out between the two countries. Then came the Treaty of 1818. This Treaty is the great foundation of the Treaty Rights as to the North American Fisheries between this country and the United States. It also comprehends the presently existing Fishery Rights of the United States in or over the territories or Dominions of Canada and Newfoundland.

*Treaties and Conventions from 1818 to 1871.*—The 1st Clause of the Convention, signed on the 20th of October, 1818, between Great Britain and the United States, is in these words, viz. :—“Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Majesty’s dominions in America, it is agreed between the High contracting parties that the Inhabitants of the said United States shall have, for ever,

in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and 'creeks from Mount Jolly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company, and that the American Fishermen shall also have liberty, for ever, to dry and cure fish in every one of the unsettled bays, harbours, and creeks of the southern coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's Dominions in America, not included in the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner abusing the privileges hereby reserved to them " Upon the construction of this clause of the Convention of 1818, the whole dispute now hinges. The Convention of 1818 was followed by a British Act, 59 Geo. III., c. 38, enabling the King to make

regulations to carry out the Convention, and declaring that it is unlawful for foreigners to fish, dry, or cure fish in His Majesty's North American Territories, except as therein mentioned, and committing the enforcement of His Majesty's rights, and the punishment of offences against the same, to the Governor of Newfoundland. Accordingly, a British Order in Council was passed on the 19th of June, 1819, ordering the Governor of Newfoundland to conform to the Convention of 1818. Subsequently, on the 14th of April, 1843, an Act was passed by the Council and Assembly of Prince Edward's Island, reciting that Foreign ships, vessels, or boats, other than such as were recognised according to the laws of the United Kingdom of Great Britain and Ireland were found fishing, or had been fishing, or were preparing to fish, within certain distances of the coasts, bays, creeks, or harbours in America not included within the limits specified in the 1st Article of the said Convention, and laying down rules in regard to the seizure of ships, vessels, or boats hovering within three marine miles, and within any port, bay, creek, or harbour of the said Island, and also in regard to the forfeiture of ships, vessels, boats, and cargoes, by contravening the rules laid down.

Several Statutes and Police regulations have since been made by the various British North American Colonies in regard to enforcing the Treaty of 1818, and all of them have been sanctioned by the Imperial Government. Against them the officials of the United States have raised objections as *ultra vires* ; but such objections are wholly untenable. Since the establishment of the Canadian Dominion in 1866, the Canadian Legislature is practically supreme within the Dominion. But Treaties with foreign powers do not fall within its cognisance. While a strong feeling of hostility and exaggeration has recently been displayed amongst a great body of the People, the Public press, and the Public men of



the United States, it is a pleasure to acknowledge that the officials of the United States and of the British North American Colonies have stated their Legal arguments with great force, ability, and fairness, throughout this grave and serious contest for the last few years. The next Treaty between Great Britain and the United States related to commerce, fisheries, &c., and was signed on the 5th of August, 1854, and is known as the Reciprocity Treaty.

By Article 1 of this Treaty, it was declared that, in addition to the rights conferred on the citizens of the United States by the Treaty of 1818, the said citizens of the United States "shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays and harbours and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several Islands thereto adjacent, without being restrained as to any distance from the shore"; with permission to land and dry fish on the shores and coasts, and also on the Magdalen Islands, provided no interference is made in regard to private property. It is also further declared that it is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers were reserved exclusively for British fishermen. It was also further declared that, in order to decide the rights and prevent disputes, the High contracting parties might appoint two Commissioners, and an Umpire, and that they should consider the decision of the Commissioners, or Umpire, as final and conclusive in each case decided by them or him. Then, by the 2nd Article of this Treaty, it was agreed that British subjects should have, in common with the citizens of the United States, the liberty to take fish of every kind, except shell-fish, on the Eastern sea coasts and shores of the United States north of the 36th parallel of north latitude,

and on the shores and in the bays thereto adjacent, and have privileges reciprocal to those conferred on the citizens of the United States by the 1st Article of this Treaty. The Treaty of 1854 had been rendered necessary by the quarrels which arose between the fishermen of the British North American Provinces and the United States.

This Treaty was confirmed by Acts of the Imperial Parliament of Great Britain and by the Provincial Parliaments of Canada, New Brunswick, Nova Scotia, and Prince Edward's Island, and by the Provincial Council of Newfoundland, and also by the Congress of the United States of America. It was intended to be a Free Trade Treaty as to the Articles which were the growth and produce of the British American Colonies and the United States, and was to continue for ten years, and was to be suspended and terminated on notice, in terms thereof. It had also reference to various claims between Great Britain and the United States under the Treaty of Ghent, of 1814, and it had also reference to the navigation of the St. Lawrence and the Canals of Canada between the Great Lakes and the Atlantic by the citizens of the United States, and also of Lake Michigan by the subjects of Great Britain. Most people in this country congratulated themselves that, at last, an end was arrived at in regard to the disputes which had long divided and estranged the inhabitants of the British North American Provinces and the United States. But they were destined to be disappointed in their expectations. A Notification was made in March, 1865, by the Government of the United States that, as it was considered no longer for the interests of the United States to continue in force the Treaty of 1854, it would be terminated, as provided for by the Treaty, on the expiration of twelve months from the date of the receipt of the Notification. Therefore, by the consent of Great Britain and the United States, it was terminated

on the 17th of March, 1866. It was followed by a system of licenses, which satisfied none of the parties, and which was therefore abandoned. After the abrogation of the Treaty of 1854 was thus carried out, matters remained in a most unsatisfactory condition between ourselves and the United States until they were settled by the Treaty which was made at Washington in May, 1871, and which was made between Great Britain and the United States for the amicable settlement of all causes of difference between the two countries. The important articles of this Treaty in regard to the Fisheries dispute are the following:—Privileges of fishing to British subjects and to citizens of the United States as in the Treaty of 1854; description or definition of places or districts reserved for common right of fishing; right to the admission of the produce of the fisheries of the Dominion of Canada, or of Prince Edward's Island, or of the United States respectively, duty free, of fish oil, and fish of all kinds, except fish of inland lakes and of the rivers, and except fish preserved in oil; agreement to settle claims arising out of greater fishing privileges being conceded to the citizens of the United States than to British subjects; agreement for freedom of the navigation of the St. Lawrence to the citizens of the United States for ever, and similarly of Lake Michigan to British subjects for ever, and subject to reasonable regulations; the establishment of the Ports of New York, Boston, Portland, and other ports as free for transit under regulations; and agreement that the Fishery Clauses of the Treaty were to be in force for ten years after they came into operation, and for two years after notice to terminate them, and that such notice might be given at any time after such ten years. It was subsequently arranged between Great Britain and the United States that these arrangements were not to take effect till the 1st of July, 1873, and that they should be extended to Newfoundland as from the 1st of June, 1874.

Subsequently, Commissioners were appointed to assess the compensation under this Treaty due by the United States to the British Government in respect of the North American Fisheries; and in November, 1877, they, under protest of the United States Commissioners, awarded five and a-half million dollars, or about one and a-half millions sterling, as compensation to our North American colonists by the citizens of the United States. In consequence of the denunciation of the Fishery Clauses of the Treaty of 1871 by the United States, these clauses were abrogated by agreement between the Governments of the two countries as from the 2nd July, 1885. The rights of the parties were thus, by the abrogation of the Treaties of 1854 and 1871, brought back to the Treaty of 1818. As I have already stated what these rights were, and have explained what they were according to the Law of Nations, as expounded by the standard author in the United States on the subject, I now proceed to explain what were the contentions of Great Britain and of the United States in the circumstances which now emerged.

*Contentions of the Governments of Great Britain and the United States.*—The contentions of the Colonial Governments, maintained on their behalf by the British Foreign Office, were:—(1) That the right of exclusive fishing in bays extended as from headland to headland; (2) that the British Colonists were not bound to sell to the fishermen of the United States any bait, by way of commerce, for the prosecution of the fishing in the places which were open to themselves and the Americans, or the world at large; and (3) that the only privileges which the fishermen of the United States had, under the Treaty of 1818, or by virtue of the Law of Nations, consisted in the rights of shelter, repairing damage, purchasing wood, and obtaining water in the bays, and creeks, and harbours of the British North American possessions. All these

contentions were traversed by the Government of the United States, and were frequently set at naught by their fishermen. So far as the International or Treaty rights of our Colonists were concerned, I am bound to confess that I am of opinion that their contentions were well founded ; and could only be modified, as between ourselves, our Colonists, and the citizens of the United States, by an express Treaty to that effect, or by the usage or general agreement of civilised nations. The point as to the headlands was one which was contended for by the United States and their most learned International lawyers. The second point comes, as I think, under the right of every independent nation to carry on trade or commerce with any other independent nation so far, and upon such terms, as the parties may agree between themselves. The third point necessarily follows the interpretation of the first as regards the headland question, and the right of exclusive property and jurisdiction within the territories of each and every independent State. If this is the condition of things under the Law of Nations, any modification of such rights, devised and obtained by the United States, was a proper subject for a *quid pro quo*, or compensation by the United States Government to our North American Colonists. Any claim by the former as against the latter, arising out of common struggles and common sacrifices at some former period of time was excluded from consideration in the International aspect of the question, and was excluded by the Treaty of 1818, when the whole Fishery Rights between ourselves and the United States were supposed, and were certainly intended, to be finally settled. But the problem to be solved became mixed up with proposals for Commercial Union and reciprocal Free Trade as between the United States and our American Colonies, and also as between both of them and ourselves, and also with suggestions for the purchase of the Canadian seaboard,

*i.e.*, the Provinces of Nova Scotia, New Brunswick, and Prince Edward's Island, and even for the annexation of the Canadian Dominion to the United States of America. Indeed, we have been told by our would-be friends and well-wishers that the addition of five million Canadians to the United States of America would strengthen the British Empire where it is weak. The purchase of the Canadian sea-board by the United States was a chimera.

*Commercial Union Considered.*—I do not here intend to enter into the vast arena of discussion opened up by the proposals for Commercial Union. As a matter of fact, the British North American Fisheries are of great value, and are almost the chief means of livelihood of the Newfoundlanders. Whatever may be in store for the Canadian Dominion or our North American Colonists in the future, neither annexation nor absorption was suggested, for a moment, as a solution of the North American Fisheries problem. There is no doubt that Commercial Union was intended by some ardent advocates to be ultimately followed by Political Union. Whatever the aims of such people, a Commercial Union between the Canadian Dominion and the United States could not long have been based on an exclusion of the subjects of Great Britain from the privileges of such a union, or on a policy of discriminating tariffs against the Mother country. The Canadian Dominion is independent in all things, except in name; but it cannot stand alone. It must either rest under the *ægis* of Great Britain, or be enrolled under the Stars and Stripes of the United States. I know of no objection to a Commercial Treaty similar to that of 1854. A Commercial Union involves different considerations.

*Imperial Union.*—No doubt, it is difficult to keep intact the central power of the British Empire, and not interfere with the liberty of local authorities. But we may hope that, in due time, although the solution is not yet discovered,

the difficulty will be solved to the satisfaction of all concerned. For the present, we must be satisfied with what Froude calls the invisible bond of friendship in our relations with our Colonies, which are rapidly growing up into great and powerful nations, both in the Pacific and the Atlantic. In the recent negotiations between Great Britain and the United States, the roundabout and tedious trilateral duel of words was felt, on all sides, to be unsatisfactory.

*Canadian Policy Practically Free.*—The “tall talk” of natives of Canada and of citizens of the United States about our desiring to keep up the old Colonial Commercial Policy for our own advantage, and about the natural course of Trade in America as being from North to South, or South to North, and not East to West is idle and nonsensical. Besides, as a matter of fact, based on our present policy or past conduct, there is nothing to hinder the Canadian Dominion and the United States of America agreeing amongst themselves for a mutually advantageous Commercial Treaty, on absolutely Free Trade principles, or on a more restricted basis, and there is every reason to believe that the mother country would sanction such a Treaty at the earliest possible moment. It is possible that some extreme Free Traders might object to the Treaty, and might refuse to have anything to do with its negotiation. But when negotiated, no Free Trader, however exalted, would dare to refuse his sanction to such a Treaty when made between the parties directly and immediately interested. In 1874, the proposals for arranging a Commercial Policy between ourselves, and our North American Colonies and the United States ignominiously failed, because they included this country, and the citizens of the United States feared that their country would be flooded with English cottons. A commercial reciprocity Free Trade Treaty between Canada and the United States concerns Canada first of all, and us only in the second place; and

would be so treated by the Ministers of any British Government, of whatever political party, in this country. The present Treaty may have important consequences as regards French rights in the British North American Fisheries.

*Recent Negotiations.*—If I am rightly informed, however, the United States, in the recent negotiations, were most anxious for Free Ports in Canada for Fish, and for a restriction of the rights of seizing their ships, vessels and boats which were captured and condemned to confiscation for infringing the territorial rights of the British North American possessions, and were pretty nearly indifferent about everything else. Our Colonists, on the other hand, were ready to give such Free Ports, and to sell bait to the citizens of the United States in exchange for Free Ports for Fish in the United States, and for an extension of the reciprocal Free Trade arrangements contained in the Reciprocity Treaty of 1854. On the whole, and quite independent of the Legal rights of the parties, this troublesome dispute and dangerous question, which had remained open for nearly a century, and had deeply embittered the relations of those who, by race, language, and history, ought to have been the firmest friends, had arrived at such a stage as necessitated another effort to reach a friendly and amicable arrangement. Holding, as the British Foreign Office did, that our Colonists were right in their Legal contentions, we were bound to stand by them in the assertion of their Legal rights, and not to subordinate their rights to any short-sighted policy as to our Imperial interests. The British Colonies cannot make Treaties with Foreign States; and, therefore, we are bound to protect their interests as if they were our own. Unless we defend and protect Colonial rights and privileges, we cannot expect our Colonies to stand by us in the day of our trouble. The North American Fisheries question is no more—is even less—a local question than reciprocal Free Trade between



Canada and the United States; for the former involved great and Imperial questions of property and jurisdiction over the inland seas. I must now briefly explain the negotiations which recently took place at Washington, and which ended in the Treaty of this year. In these negotiations, the Rt. Hon. Joseph Chamberlain, M.P., our own special Commissioner, Sir Lionel West, our Resident Minister at Washington, and Sir Charles Tupper, Finance Minister for Canada, were the British Plenipotentiaries, and Mr. Bayard, Secretary of State, and Mr. William Putnam, of Maine, and Mr. James Angell, of Michigan, were the Plenipotentiaries of the United States of America.

*Recent British, Canadian, and American Negotiations.* -- After some friendly communications between the Governments of Great Britain and the United States in May and June, 1887, the several Governments interested agreed to appoint plenipotentiaries to settle the disputes between them as to the North Atlantic Fisheries. Accordingly, the Plenipotentiaries above named were appointed by the Governments of Great Britain and the United States, and a Delegate was named by the Newfoundland Government to advise the British Representative as to the interests of his Constituents. This assemblage was to give representation to all the various interests involved in the dispute. The American fishermen and the Irish population in the United States were opposed to a friendly settlement. In Canada also, strong opposition was aroused to any settlement which was not actually, or in some reasonable degree, based on the commercial reciprocity of the Treaty of 1854; or, at least, on reciprocal privileges of Free Ports for our Colonists and the United States, and reciprocal rights of Transit of fish, without paying any Tariff dues, across Canada and the United States. At an early stage of the negotiations, our representatives expressed themselves as ready to agree to exclude all Bays which

measured more than ten miles in breadth at their mouths, from the districts or territories over which we claimed exclusive rights of Territorial jurisdiction, and stated that they were authorised to have the points fixed by the low water mark in the general case, and from points starting at the mouths of Bays less than ten miles from headland to headland, and that the three marine miles should be measured from the points agreed upon in all cases. The difficulties which arose sprang from the claim of our Colonists for compensation, or increased commercial privileges in the United States, in exchange for the increased commercial fishing rights claimed by the United States. There was an unanimous opinion amongst the Plenipotentiaries that a Delimitation Commission would require to be appointed to carry out any arrangements which might be made. In December, 1887, the negotiations were supposed to have broken down in consequence of the irreconcilable claims of the parties; but they were adjourned for a month to enable all parties to re-consider their rival contentions and claims. At the end of December, reference was made by the British Plenipotentiaries to the Home Government, when, it is believed, an agreement was arrived at by the Home Government to refer the whole matters in dispute to arbitration, and accordingly to accept Mr. Bayard's proposals for settlement, namely, as to (1st) whether the fishing vessels of the United States and those of the British Northern American Colonies were reciprocally entitled to commercial privileges, and (2nd) whether the three mile limit followed the irregularities of the shore, or was to be measured from a straight line drawn from headland to headland.

*Negotiations Concluded by a Treaty.*—When the Plenipotentiaries met again, in the beginning of this year, they were able to arrive at the friendly arrangement which is embodied in a Treaty dated the 15th of February, 1888. This arrange-

ment, although it surrendered several long asserted International claims, was based on Policy, and an enlightened regard to the permanent, peaceful, and commercial interests of all parties. Indeed, it was, on the whole, a generally fair settlement of a long standing, irritating, and dangerous International dispute. On the one hand, Mr. Bayard has said, as I think, rightly enough, that the Americans had got substantially all they had ever contended for; on the other hand, the British Plenipotentiaries have been cautious not to boast of their Diplomatic experiences on the other side of the Atlantic. Sir Charles Tupper, however, has assured the Public that, from first to last, all the Commissioners were animated with a most friendly feeling towards each other, and most anxiously worked hard to arrive at a satisfactory termination of a long pending dispute. He might have added that, if they had reached a friendly settlement, they had done so by sacrificing all the contentions which had been upheld and defended by the British Governments at home or in the American Colonies, and that the United States had walked off with all the advantages. From a Legal aspect, the Treaty is not at all favourable or satisfactory to this country; but, from a Commercial aspect, which I do not discuss here, it may be different. As to the right of preparing to fish, which was claimed by the American Fishermen as a commercial right, and which was denied by our Colonists, the fight ended in a drawn battle, in which, perhaps, the advantages were on the side of our own Colonists. This commercial right was claimed under a Commercial Treaty of 1830; but was, as I think, not included within its terms. Not till about the year 1848 were the ocean fishings on the British North American Coasts supposed to be of any great value. Still, notwithstanding all these drawbacks, any friendly arrangement was better than International arbitration. Throughout the recent negotiations, the United States

insisted on the dispute as to the Fisheries being settled on its own merits, and peremptorily refused to consider it in reference to a new or favourable tariff being made towards our North American Colonies by the United States. The negotiations, in fact, ultimately ended by mutual concessions, in which the United States received the greatest advantage. How this is so, will be seen from the terms of the Treaty, and relative *modus vivendi*. Possibly, however, greater commercial advantages are in store for the North American Colonists by the making of a Commercial Treaty with the United States on a broad and comprehensive basis. I may here observe that the new Treaty does not settle the Pacific Fisheries, which are in dispute between the British and United States Governments, and merely applies to the Atlantic Fisheries in dispute between them.

Although the British Plenipotentiaries were prepared to settle the disputes which had arisen between this country and our North American fellow-subjects, on the one hand, and the United States, on the other, in regard to the Behring Straits Fishings, the American Plenipotentiaries would not enter upon them. The Behring Straits Fishings in the Pacific Ocean have as much need to be amicably settled as the Canadian and Newfoundland Fishings in the North Atlantic Ocean. They must be settled soon, or troubles will arise between us and the United States. Disputes have, for the last two years, been in existence as to these fishings, which are exclusively claimed by the United States as the owners of the adjacent Territory of Alaska, conveyed to them by Russia.

*Terms of the New Treaty.*—The following are the terms of the Treaty:—

1. A Mixed Commission is to be appointed to delimit the British waters, bays, creeks, and harbours, of the coasts of Canada and Newfoundland, as to which the United States,

by the Convention of 1818, renounced for ever any liberty to take, dry, or cure fish.

2. The three marine miles mentioned in Article I. of the Convention of 1818 shall be measured seaward from low water mark; but, at every bay, creek, or harbour, not otherwise now specially provided for, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbour in the part nearest the entrance at the first point where the width does not exceed ten marine miles.

3. Special provisions are made in regard to the Baie des Chaleurs, the Bay of Miramichi, and several other enumerated bays; and as to bays, creeks, or harbours which cannot be reached without passing within three marine miles; and as to the free navigation of the Straits of Canso by the fishing vessels of the United States.

4. An enlarged interpretation is, in future, to be given as to reporting, clearing, and putting into harbours for necessities, repairs, and shelter.

5. Transshipment of fish cargoes belonging to the fishermen of the United States is to be allowed under certain friendly stipulations, and licenses are to be granted to them, on application, for certain necessary purposes.

6. Fishing vessels of Canada and Newfoundland shall have, on the Atlantic coast of the United States, all the privileges reserved and secured by the Treaty to the United States fishing vessels in the waters of Canada and Newfoundland.

7. Penalties in fines and confiscation are to attach to the breach of this Treaty, and the proceedings in connection therewith shall be summary and inexpensive.

8. Whenever the United States shall remove the duty from fish oil, whale oil, seal oil, and fish of all kinds, except fish preserved in oil being the produce of the fisheries carried on by the fishermen of Canada and Newfoundland, including

Labrador, then, the like products being the produce of the fisheries carried on by the fishermen of the United States, shall be admitted duty free into the Dominion of Canada and Newfoundland. And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays, and harbours of the coasts of Canada and Newfoundland shall be accorded to the United States fishing vessels, by annual licenses, free of charge, for the following purposes, namely—(1) The purchase of provisions, bait, seines, lines, and all other supplies and outfits; (2) Transshipment of catch, for transport, by any means of conveyance; and (3)\* Shipping of crews. The like privileges shall be continued or given to the fishing vessels of Canada and of Newfoundland on the Atlantic coasts of the United States. And

9. The Treaty shall be ratified by the American President with the consent of the Senate, and by Her Britannic Majesty, with the assent of the Legislatures of Canada and Newfoundland.

A *modus vivendi* was voluntarily offered to the American Plenipotentiaries, and is to continue in existence for two years, or until the new Treaty is ratified or rejected. So long as it exists, this temporary arrangement will effectually put an end to the late disturbances and heart-burnings. It stipulates for the payment of a certain yearly sum, by way of license duty, payable by the ships, vessels, and boats of the United States engaged in Fishing beyond the Canadian Territorial water, and authorising the purchase of bait, ice, and necessaries in Canadian Ports by American citizens. As the American fishermen declare that this license duty is extravagantly high and unjustifiable, and so on, and our own Colonists declare that it is totally inadequate for the privileges conferred, we may not unreasonably assume that the license duty, proposed to be imposed as a temporary

measure, is reasonable in all the circumstances. Now comes the question of the ratification of the Treaty, or of the enforcement of the *modus vivendi* till the Treaty is ratified or rejected.

*Treaty Criticised.*—On the strict grounds of International Law, and the Treaty Rights of the British North Americans, the new Treaty, just concluded, is indefensible; because International Law, according to one of its most eminent exponents—himself an American citizen—gives the fishing rights in bays, between the headlands of a State, to the inhabitants of the adjacent territory, and because this new Treaty greatly modifies these rights as against Great Britain, the Canadian Dominion, and Newfoundland; and (2) because the Treaty of 1818 gives, or confirms, the right to the fishings in such bays to British subjects for ever. We have, practically, and to all intents and purposes, given up to the Americans the greater part of the fishings of the Bays of Miramichi and Chaleur, and of various other bays. Now, as I have already shewn, on the ground of International Law, Treaty rights, and our own long and loudly repeated assertions as regards the rights of the parties, we were obliged to defend and protect these rights entire as part of the British Empire, or to get some equivalents for them. What have we got in return? Nothing, absolutely nothing, unless a barren right of fishing, which we have no wish to enjoy. Certainly, the advantages of the Treaty are not conspicuous on our side. Perhaps, they may be more easily seen by persons engaged in Trade than by those trained to the practice of the Law. So far as I can see, we have not got the balance of profit on our side by the Treaty. In my opinion, the rights of the Americans to the outshore or bay fishings are defined by us with great liberality. Still, inasmuch as a settlement of the question was imperative and not easy, the Government has properly thanked the British Plenipotentiaries for

bringing their work to a peaceful end. Anything is not better than war—even a war of Tariffs—but anything in the shape of a permanent settlement of this dispute between the United States and ourselves and our North American fellow-subjects, by ourselves and themselves, and amongst ourselves and themselves was infinitely to be preferred to a costly and uncertain Arbitration. No wonder, therefore, that Mr. Secretary Bayard has spoken of the new Treaty as giving his country 99 per cent. of all the fishing grounds they had ever claimed, or of any value, in the Maritime Provinces of Canada. Nay more, no wonder the British Plenipotentiaries, who negotiated this Treaty, speak very modestly of their work, and have left their enthusiastic admirers to boast of what our Plenipotentiaries had accomplished. From the point of view of International Law, the British Plenipotentiaries surrendered everything which the American Plenipotentiaries could have asked with any reasonable ground of success. If the Treaty has any justification at all, it is as a Commercial Treaty. As such it does not lie within the province of this Article. But, even as a Commercial Treaty, I am at a loss to see what, in the way of barter and sale, the Canadians and the Newfoundlanders are to get, under the Treaty, in exchange for the rights which they have agreed to surrender. I should like to know, for example, whether the United States Government has abandoned all claims against us for compensation for alleged illegal seizures of ships and cargoes.

Summing up this Treaty, I would say that it stipulates for a Delimitation Commission; gives an interpretation of the Territorial jurisdiction of the three mile limit from the shores; confers certain privileges by issuing free licenses; determines the penalties for Infringement of the Treaty; and makes arrangements for a future and hypothetical adoption by the United States of Free Trade principles



as to fish and fish oils. It is, therefore, very much more limited in its scope, in certain commercial respects, than the Treaties of 1854 and 1871. It is clearly and decidedly American in its origin, and in all its essential features bears a striking likeness to the proposals made to us by the United States in 1866, 1870, and 1886, save in two or three important particulars.

Whether there shall or shall not be free fish between our American cousins and our American fellow citizens, the fishing rights of the latter in the Bays of Chaleur, Miramichi, and of other regions, are practically gone for ever. In fact, the labours of the Delimitation Commission will be permanently binding for all time as soon as the several Governments ratify the Treaty; but reciprocal Free Trade, though granted hereafter, need not last for a single day. Worse still, we can never get back to our former position. The British Home Government conferred full powers of negotiation on their Representatives. But the correspondence which passed during the negotiations between the British Plenipotentiaries and Lord Salisbury has not yet been made public. It would have been very satisfactory to me if I could have seen it before writing this Article. Can we wonder, then, that there exists a widely-spread opinion that the interests of our Colonial fellow citizens have been sacrificed in the interests of the Empire, or, at all events, in the interests of peace and good neighbourhood? Why we alone, and our American fellow citizens, should be obliged to surrender our legal rights, which have a great and real money value, to the American Government, for little or nothing, in the interests of good neighbourhood, I do not understand. Why should not the United States have given up something as an actual equivalent for the rights surrendered? If so, what have they given up?

*Conclusion.*—Neither on general principles of International

Law, nor on Treaty rights, am I able to come to the conclusion that a just, satisfactory, or permanent settlement has been arrived at on this great question, as between Great Britain and our North American Colonies on the one hand, and the United States on the other. In this opinion, all the Foreign and Colonial Secretaries of this country, and their legal advisers for the last 70 years must, I think, be held to agree. If not, what have they been contending for from 1818 up to the end of last year? Besides, why did our North American Colonies get Free Trade in 1854, and nearly one and a-half millions sterling for fishing rights from the United States, under the Treaties of 1854 and 1871, and nothing under the present Treaty of 1888? At the same time, I believe that the late Plenipotentiaries on both sides, in the face of rival and antagonistic contentions, have done their utmost, by mutual concessions, to arrive at such a settlement. On the whole, I also believe that all the officials concerned with the making of the Washington Treaty of 1888 have, by compromise, struck out a reasonable basis for a real and lasting settlement. Still, after reading the published correspondence on the subject, I have no hesitation in stating that, in my opinion, this Treaty, in all its essential clauses, could have been obtained by negotiations between the several Governments concerned, by means of their Representatives in London or in Washington, and without the aid of Extraordinary or Special Plenipotentiaries. I confess that I am not much in love with the recent successes of our Special Envoys in Egypt, or in the United States, and would like to see a return to the old-fashioned practice of entrusting our Ambassadors abroad with the most important as well as the most trifling of our public affairs, in the various countries to which they are accredited.

To be ready to place one's best services at the disposal of the public, and at a moment's notice, is courageous,

honourable, and patriotic. But in complicated and long-pending disputes, involving a considerable amount of special knowledge, both Principals and Agents are often liable to severe disappointments and surprises; and, as in the present instance, national rights are apt to be surrendered without any corresponding equivalents. Still, I suppose we must console ourselves with the reflection that what a friend gets is not lost, and hope that he will be satisfied for a long time, and at least for the present, with what he has got from our excessive good nature and love of peace. This, as a general rule, is not the way to uphold the honour, dignity, and rights of a great nation. But then, for our acting special Plenipotentiary, even although he was only one of three with equal powers, and any two of them could act for all, to have come empty away to this country, would naturally enough have been awkward, and most unsatisfactory to him, and would not have been very palatable to the Government by which he was sent to Washington. Notwithstanding all that has been said of the great things which have lately been done for us at Washington by Mr. Chamberlain, we have really passed under the Caudine Forks, and must now make the best of our bargain.

As I have already stated, I have, of course, avoided entering into any discussion of the Commercial value of the present Treaty. My sole object has been to consider this great question as a matter of International Law and Treaty Rights.

ALEXANDER ROBERTSON.

[\*.\* Whether the Senate of the United States will ratify the Washington Treaty of 1888 is at present uncertain, and is in some quarters considered doubtful. It may be worth while to point out that the Treaty, if ratified, need not be of permanent obligation, and might be ratified only for a specified term of years, such as five or ten, or subject to determination on a fixed period of one year or two years from its denunciation by either of the High Contracting Parties.—ED.]

## Quarterly Notes.

### Law and History at the Free School of Political Science, Paris.

It is some time since we have been able to draw the attention of our readers to the excellent courses of instruction in Law, History, Economics, and Languages which this valuable Institution offers to the *studiosa juvenitus* of Paris. We are glad to take a few particulars from the programme for the current session of 1887-8, as to some of which we should be only too pleased if we could shew a similar record among ourselves, at the head-quarters of the Legal Profession in England.

Bearing in mind the fact that we are apt to speak of our Inns of Court as Colleges in a Law University (*in nubibus*), and that the School in the Rue St. Guillaume in Paris is a "Free" School, that is, like our Inns of Court, entirely without support from the State, we think the following points well deserving of the attention of all who are interested in Legal Education in our own country.

As the aim of the instruction given is to prepare for the Home and Foreign Service of the State, we find courses both in Administrative Law, as it is called in France, and in International Law and Diplomacy, besides Maritime, Commercial, and Colonial Law, and Constitutional History.

The scheme of instruction is two-fold, Courses of Lectures (*Cours*) and Conferences (*Conférences*), the former general, the latter special and practical. The Comparative method is adopted throughout. The course of study is based on an attendance for two years, but can be commenced in either year, and students who are not seeking the Diploma of the School can combine the various courses in any way most suitable to their particular needs.

For working purposes, the Lectures and Conferences are divided into five Sections, viz., I. Administrative, II. Diplomatic, III. Economic and Financial, IV. Colonial, V. General.

The Economical division of Section III., we may remark, is specially provided for by the Goldschmidt Chair of Political Economy, filled by M. Dunoyer, former Councillor of State, who lectures on the development of the Science of Economics from the Physiocrats and Turgot down to Adam Smith, J. B. Say, Ricardo and Malthus. Sections I.—III. prepare for the Inspectorships and Auditorships in the *Cour des Comptes*, the Council of State, &c., at home, and for the Diplomatic Service. Section IV., at present devoted to the requirements of the Colonial Service in the Far East, *i.e.*, Annam and Tonquin, is about to be enlarged so as to take in the countries in which Mohammedan Law obtains, such as Algeria and Tunis. Section V., as the General Section, is intended to put the finishing touches to a good, sound, really liberal education, fitting the student who profits by it for any walk in life, whether private or public.

In connection with the Colonial Section, it is worth mentioning, as a proof of the practical spirit in which the School is conducted, that the students have special permission to study Chinese, Annamite, and Arabic at the School of Living Oriental Languages. Yet another such proof is afforded by the establishment of what are called Groups of work, or gatherings of former students for Conferences under their old teachers, in which these students renew their relations with the School by discussing special questions of practical interest. The best of the Papers produced at these discussions form part of the contents of the *Annales* published by the School. Of these Groups three are in full working order: Law, Public and Private, under MM. Ribot, Alix, Renault,\* and André Lebon;

History and Diplomacy, under MM. Sorel, Pigeonneau, and Albert Vandal; Finance, under MM. Léon Say, De Foville, and Stourm.

Turning to the several Departments of study, we find Constitutional History naturally taken by the able Director of the School, M. Emile Boutmy, of the Institute, whose interesting Essays on the Sources of the English Constitution, published in the *Nouvelle Revue Historique de Droit* of Paris, are, we find, not unfrequently cited in the Notes to the Third Edition of Taswell-Langmead's *English Constitutional History*.

In the Session 1887-8, M. Boutmy gives a Comparative History of the English, American, and French Constitutions from 1789. Perceiving, rightly enough, the inseparably related character of the two subjects, Constitutional Law and Constitutional History, which are, indeed, only two aspects of the same subject, M. Boutmy, equally rightly, to our mind, deals with both. His course is therefore, in point of fact, as much a mixed course of Law and History as the whole of the studies of the old School of Jurisprudence and Modern History at Oxford were mixed studies.

It would be interesting to students of Constitutional Law and History in this country to hear M. Boutmy's views on such crucial questions as the Future of the House of Lords, the Relations of the Two Houses, the Relation of Ministers to the Houses and to the Crown, and then to compare them with his description of the President of the United States, the Senate and House of Representatives at Washington, and his outline of the several French Constitutions from 1791 to 1875, and his treatment of the Revision question, and other important Constitutional questions of the day in France.

Passing to the realm of the Law of Nations, we find the field well covered, both as to Teachers and Subjects.

M. Albert Sorel, in his Lectures on the Diplomatic History of Europe, 1818-78, takes his hearers from the *régime* of the Treaty Settlements of the close of the great European War against Napoleon I., to the "Peace with Honour" of the Congress of Berlin, whose settlements are still the subject of not a little European discussion. In his Conferences, M. Sorel devotes himself to the interior organisation of the Diplomatic Service, and the mode of carrying on Diplomatic negotiations. In the same Section, M. Anatole Leroy Beaulieu, of the Institute, lectures on the Political History of the Great Powers during the last twelve years, dividing his subject into Eastern Europe, Central and Southern Europe, and Great Britain, while M. A. Vandal lectures on the Eastern Question exclusively, from the period of Greek Independence down to the recent questions of Egypt, Tunis, and Bulgaria.

The Diplomatic History of Europe from the Peace of Westphalia to 1789 is treated by M. A. Pigeonneau, Professor in the Faculty of Letters of Paris, in a course opening with the period of Richelieu and Mazarin, and closing with the Independence of the United States, and the League of the Neutral Powers. As a supplement to this, M. De Ferrary, Professor at the Collège Chaptal, analyses, in a separate course, the chief Treaties, 1648-1789, and gives an account of the principal Collections of Treaties.

The history of its own National Institutions is naturally not neglected by a French School. The Parliamentary and Legislative History of France from 1789 to 1875 is treated in two periods, allotted severally to M. Jules Dietz and M. André Lebou, *Chef de Cabinet* to the President of the Senate. M. Dietz takes the earlier period, 1789—1830, opening with the Revolutionary Assemblies and closing with the Polignac Ministry and the famous *Ordonnances*. M. Lebou takes up the thread of the Political narrative at

the Reconstruction of the principal Institutions involved in the establishment of the July Monarchy, as shewn by the new Laws on the Electorate, Local Organisation, the Army, Public Education, the Revision of the Penal Code, &c., and carries it on through the Revolution of 1848, and the Second Republic, the *Coup d'Etat*, and the Second Empire, down to the Franco-German War, the overthrow of the Empire, and re-establishment of the Republic, winding up with the Constitution of 1875. While on this branch of the subjects taught in the Free School of Political Science, we may remark that the Society of Comparative Legislation has for several years past added to the value of the Parliamentary Summaries given Session by Session in its *Bulletins*, by the publication of a separate *Annuaire* devoted to the year's Legislation in France, the latest volume, that for 1887, giving the Legislation of 1886.

Economical Science, besides the special provision already described under the Goldschmidt Chair, comes in for a twofold share of treatment, firstly under the head of Administration, where M. Gabriel Alix gives an account of Budgets, Public Resources, Direct and Indirect Taxation, National Debts, Public Works, and other kindred topics, while M. René Stourm, a former Inspector of Finances, in a separate Section, under the head of French and Foreign Finance, traces the history and development of the existing Budget System in Great Britain, Germany, the United States and France, explains its working, discusses Revenue and Taxation, and gives an account of the present Financial condition of the principal Powers. In addition to this course, M. Machart, Commissary General of Railways, goes into the details of the Administration of French Finance in a weekly Conference. M. Rœderer, Inspector of Finance, devotes another weekly Conference to the Legislation on Taxation in France, and M. Colmet-



Daage, of the *Cour des Comptes*, gives two weekly Conferences on the Decree of 31st May, 1862, in Theory and Practice, in its relation with the *Cour des Comptes*, the General Budget of the State in its relation with the Judicial Power, &c.

The next point to which we would now draw attention is connected with the Colonial Section, where we note with interest that M. Silvestre, formerly Chief of the Native Judicature in Cochin China, gives two weekly lectures on Annamite Law, and on the Administration of that little known land of the Far East.

In his course for 1888, M. Silvestre will continue to lecture on the Civil Law of Annam, under the heads of the Law of Property and the Law of Obligations. He will then take up Penal Law and Procedure, giving an account of Annamite Penal Law in its relation to the State, the Individual, and Property. After the purely Legal course is concluded, he will pass to the Administrative portion of his subject, and describe the divisions of the country into Regions, Provinces, Prefectures, Sub-Prefectures, Cantons, and Communes, and give an account of its Taxation, and its Commerce and Industries. In close connection with this course, though more general in scope, comes a Conference on Colonial Legislation, by M. Wilhelm, Secretary in the Ministry of Marine and the Colonies. M. Wilhelm expounds the general scheme of the Political and Administrative System of France in regard to her Colonies in its several historical stages, the Legislative and Judicial Regimen of the Colonies, and discusses the question, Who legislates for the Colonies? He then passes to the consideration of the Financial and Economical *régime* of the Colonies, and makes a special application of his course to the Asiatic Colonies, winding up with a general application on the utility of Colonial Extension, from both the Military and Economical points of view.

Colonial Geography follows, and affords M. Paul Pelet matter for a weekly Conference on Indo-China, Madagascar, Congo, and Senegal, while France in Northern Africa gives sufficient occupation for another weekly Conference, by M. Louis Vignon, *Chef de Cabinet* to the President of Council, devoted to the Economical situation of Algeria and Tunis, and to the special consideration of the Religious question and the Native question in the African Possessions of France.

Under the head of the Law of Nations, M. Funck-Brentano lectures on the Principles and Historical *Origines* of the Law of Nations, and discusses that Law in Time of Peace and in Time of War, together with the Law of Neutrals and Maritime Law.

Under the head of International Law, M. Renault, Professor in the Faculty of Law, holds a Conference on Consulates, and on Administrations of an International character, such as Railroads, Posts and Telegraphs, Weights and Measures, &c., with a Supplementary Conference, having the Far East specially in view in regard to the important question of the position of Aliens there. In the division of Commercial Legislation and Maritime Law, M. Lyon-Caen, Professor in the Faculty of Law, treats of the History of Commercial Law, and the various attempts at its Unification in modern times, describes the Law of Companies (*sociétés par actions*) in Belgium, Italy, Germany (under the Law of 1884), and Great Britain, and also takes the Law of Bills of Exchange in the same countries. As M. Lyon-Caen treats with similar fulness the Law of Bankruptcy in its International aspects, and Maritime Law down to the York and Antwerp Rules, framed by the Association for the Reform and Codification of the Law of Nations at the Antwerp Conference in 1877, it will be seen how wide in their scope and practical in their character, and how interesting in their varied subject

matter, are the courses of instruction provided by the Free School of Political Science in the Rue St. Guillaume in Paris, to which we heartily wish all success.

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**The Institute of Actuaries and the Life Insurance Sections of the Married Women's Property Acts, 1870-1882.**

The Institute of Actuaries of London assembled for the first meeting of the Session of 1887-8 in their new home, the interesting old hall of Staple Inn, on the 28th November last, and the occasion called forth a learned, historical address from Mr. Archibald Day, the President of the Institute, to which we called attention in the February number of this *Review* in a Quarterly Note on *Staple Inn and the Inns of Chancery*. We now desire to discuss certain points of interest to the Legal Profession arising in a Paper read before the Institute, December 19, by Mr. William Hughes, of the Prudential Assurance Company, in which the working of the sections on Life Assurance in the "Married Women's Property Acts," was freely and intelligently criticised. As regards policies effected by the married woman herself, all seems to have run pretty smoothly, the simple direction for separate use being clear and sufficient. But the sub-sections dealing with policies effected for the benefit of the wife or children have been thought to teem with difficulties, at least from an Actuarial point of view. As a matter of fact, Mr. Hughes tells us that there are only four reported cases, so that it would not seem, at first sight, as if much trouble had arisen. But this is not, perhaps, an inevitable conclusion, for it might well be that the new and singular provisions alluded to would not very frequently be used, and that disputes about them, when they happened to occur, would generally be settled out of Court. But let us look into the matter for a moment. The provisions of the Act of 1870 are not of much consequence now,

being repealed by the Act of 1882 with the usual savings as to acts done and rights acquired during the short lifetime of the earlier Act. The corresponding provisions of the later Act are not likely, really, to give rise to much litigation, for the effect of sub-section 2 of section 11, which deals with the subject under consideration, is that the person who insures expressly for wife or husband and children (or any of them) shall be deemed to create a trust for them, and that the person so insuring may appoint a trustee or trustees, while due provision is made for the non-appointment or failure of trustees, and the personal representatives of the insured can give a discharge to the office if no trustee exist when the insurance money becomes payable. Mr. Hughes tells us that doubts have arisen as to the form which the policy should assume, but we gather from an illustration which he gives that the *crux* has only occurred seriously with respect to the Act of 1870, which, as an expiring Act, cannot occasion any permanent uneasiness. But, even as regards the Act of 1882, there is still the objection, in Mr. Hughes's opinion, that a policy of insurance seems to be singled out as something special which may be placed beyond the reach of creditors. To this it may be answered that the same kind of provision for the family might be made by way of settlement, and that the "sentimental" provisions (as they have been called) as to policies are really—if workable—only a cheap and simple substitute for the complicated machinery of a formal settlement. There remains still the objection, in the opinion of Mr. Hughes, that the Act does not give discretionary powers to the Trustee, or legal personal representative, to carry out the trust in any way he thinks fit, and he suggests that, in any future legislation on the subject, there should be a provision conferring such powers. Mr. Hughes's opinion is entitled to great respect, on account of his practical insight into the subject, and

the great care which he has evidently bestowed on its treatment as an Actuarial difficulty. At present, however, we cannot exactly see why, from the point of view of the Insurance Offices, any change should be thought necessary. The Trustee, or the legal personal representative, can give a complete receipt, and what more can the Insurance Companies want? The provisions of the Act are certainly vague as to the destination of the money when it has once been paid; but this, after the discharge has been given, need not occasion any anxiety to the Company which has paid it. Mr. Hughes reviews the whole subject very fully in his Paper, and the comments and varied opinions of the President and the members present at the meeting are well worth perusal. Apart from the particular subject of the Paper, we agree with Mr. Hughes in thinking that whatever amendment of the Law or new Legislation affecting Life Assurance may be hereafter attempted, it is hardly likely (or, at least, it ought not to be likely) that the value of the practical knowledge of the working of the law necessarily possessed by the Institute of Actuaries will in future be ignored.

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#### **Mining Law and Recent Legislation.**

The unwonted activity of the last Session of Parliament in legislating for the mines of coal, ironstone, shale and fire-clay in every part of the United Kingdom, as also for the Stannaries of Cornwall and Devon, renders Mr. MacSwinney's *Law of Mines (The Law of Mines, Quarries, and Minerals*. By ROBERT FORSTER MACSWINNEY, M.A., Barrister-at-Law. W. Maxwell and Son) a very acceptable book to those interested in treasures from the bowels of the earth. The book must, of course, be read side by side with the new Statutes, above referred to, but they do not materially affect the general principles of the work, which

will in all probability serve as the text-book on the subject for a long while to come. Although it only professes to enunciate the law which governs mining subjects in England, it nevertheless includes a few Scotch, Irish, and Colonial cases ; also the Irish Statutes and a selection of the Scottish and Colonial Statutes referring to Mining. The treatise will enable an average lawyer to fathom the mysteries of Barmotes and Barmasters, of the account of dish or toll-tin, of the land-dole, and of pot water. The new legislation has provided for the appointment of checkweighers at the place at which mineral is weighed, when the amount of the wages payable to miners depends on the quantity and quality of the mineral sent to the surface ; and with regard to coal mines and mines grouped under that heading, no girl or woman of any age is allowed to be employed below ground. The latter is an important provision which we would fain see extended to all mines, the work underground being hard and unsuited to women. The new legislation, however, may be welcomed as a step in the right direction, and in these latter days we have to be grateful for small mercies.

## Reviews.

*Patents Conveyancing: being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions; with Dissertations and Copious Notes on the Law and Practice.* By ROBERT MORRIS, M.A., of the Inner Temple, Barrister-at-Law. Stevens and Sons. 1887.

The author informs us in his preface that the number of Patents granted annually may probably be taken at not less than 10,000. How many of these 'interesting Commercial flow'rets are born to blush unseen, he does not tell us—but that is "neither here nor there." His reflection, far more to the point in a legal Treatise, is that, having regard to the enormous amount of Patent business that is continually going

on, it is strange that its right to form the exclusive subject of a legal Treatise has not till now been recognised. The author boldly and justly asserts that right, and expresses his opinion that a book of Precedents in relation to Patents will supply a long-felt want. It must not be supposed, however, that Mr. Morris confines himself to the limited field of Conveyancing Forms; on the contrary, each group of Precedents is ushered in by a chapter containing the law, as settled by Legislative and Judicial authority, relating to the special subject-matter of that group; and an Introductory Chapter summarises briefly the general Law of Patents, from their phoenix-like origin in the ashes of Monopolies to their riper condition under the Act of 1852, but before the broad consolidation of the Patents, Designs, and Trade Marks Act, 1883. It was a wise precaution to commence with a summary of this kind, for there are few branches of Law which can be satisfactorily taken up at a specified modern date without some knowledge of the state of things which previously existed. This is aptly illustrated by the curious question discussed in this chapter, whether the legislation of 1883 has deprived first *importers* of the right to a patent which, according to *Edgebury* (not *Edgeberry*, by the way) *v. Stevens*,\* they possessed under the old law. On this subject, Mr. Terrell, Mr. Seward Brice, Mr. Aston, Q.C., and others, have expressed conflicting views; the last-mentioned writer answers the question in the negative, and the present author agrees with him. It is probable that this will prove to be the right view, for the word "invention" in the modern Act is expressly identified with the same word in the Statute of Monopolies;† and, as "inventor" is not directly defined in either Act (on this point of detail Mr. Morris's words at p. 2 are, perhaps, a little misleading), it must be understood by reference to "invention," which, as already stated, has the same meaning in both the Acts. If, therefore, "inventor" is to have a less comprehensive meaning than of yore, the decision above mentioned, which has held its own, apparently, for about 200 years, must first be over-ruled. However absurd such a decision may be,‡

\* 1 Webs., 35.

† *Vide* 46 & 47 Vict., c. 57, s. 46, referring expressly to 21 Jac. I., c. 3, s. 6.

‡ The reasoning of the case is that "the statute speaks of new manufactures within this realm, so that if it be new here, it is within the statute." But, in common sense, the words "within this realm," in the Act, have relation to "working or making."

it cannot be set aside by text-writers ; although the Court, if it thinks fit, may say " This is a new Act, and we are at liberty to adopt a new construction." The divisions of Mr. Morris's book are judicious. Immediately after the Introductory Chapter comes a Chapter on Agreements of all kinds relating to Patents, followed by Precedents of such agreements ; then, with a similar arrangement of Treatise and Precedents, Assignments (including assignments by way of mortgage), and Licenses ; a few useful Miscellaneous Precedents (*e.g.*, Power of Attorney to take out a Foreign Patent, notice to determine a license, &c.), complete a text of nearly 300 pages. The Appendix, which contains the Patents Acts and Rules, together with other matter of general utility, such as the International Convention of March 20, 1883, and the Conveyancing and Law of Property Act, 1881, fills about 82 pages, and a copious and searching Index occupies nearly 60. The book is handsomely turned out, and is likely to have a friendly reception at the hands of the many barristers and solicitors to whom such a guide is a desideratum.

*On Searches. Containing a Concise Treatise on the Law of Judgments—Crown Debts—Executions—Lis pendens—Bankruptcy—Insolvency—Annuities—and Statutory Charges as affecting Land.* By HOWARD WARBURTON ELPHINSTONE, M.A., and JAMES WILLIAM CLARK, M.A., Fellow of Trinity Hall, Cambridge, both of Lincoln's Inn, Barristers-at-Law. W. Maxwell and Son. 1887.

It would scarcely be supposed, perhaps, that a subordinate and mechanical branch of Conveyancing like Searches could be sufficient in itself to form the subject of an entire Treatise ; but those who examine the work of Messrs. Elphinstone and Clark will find that their volume of about 180 pages is well filled out, and that without superfluity of diction or other padding of any kind. Turning over the pages, they will see everywhere the marks of honest work, and no appearance of that vanity or idleness which leads some authors to mix up long comments of little or no value with the crisp and sharp statements of settled law which represent the really useful result of their labours. A concluding Chapter on " the searches usually made " will probably be of much use to young Solicitors, who are often a little anxious to know what is their duty on this head. No doubt, there are different opinions, both generally and in particular cases, as



to the limits within which searches may be safely, and therefore legitimately, confined. It would be rash, perhaps, to adopt the view of a Solicitor, recorded at p. 148, that searches are such devourers of costs that it is best, in small transactions, to omit them altogether, even at the risk of an action for negligence; but it must be allowed that there should be some thought of the proportion between the value of property and the money that we may spend in acquiring it. It is useless to buy land if we are to have a judgment, or *lis pendens*, sprung upon us the next day; but it is scarcely better to pay double its value in order to be sure of a good title. By following the advice given by Messrs. Elphinstone and Clark, in this chapter, the reader will be able to steer a reasonable course between the Scylla of unsafe economy and the Charybdis of ruinous expenditure. The book will be useful to Conveyancing Barristers, and will, probably, come to be looked upon as indispensable by Solicitors who have much to do with landed property.

*The Student's Guide to the Law of Specific Performance and Mortgage.* By JOHN INDERMAUR and C. THWAITES, Solicitors. Geo. Barber. 1886.

Considerable skill has been displayed in compiling this small treatise on the important subjects of Specific Performance and Mortgage. The style, like that of all of Mr. Indermaur's other works, is pleasing, and important points have been carefully dealt with. We have no hesitation in saying that students may read it with advantage, either as preparatory to their study of a standard work, or shortly before the examination.

We regret to find, however, that the value of this book has been greatly diminished by its being made to consist, in parts, of questions and answers. We always advise that a student should try and find out accurate answers for himself instead of getting them "ready made." Having answers before him he is liable constantly to refer to them without thinking for a moment of testing his own knowledge. Small books, like the present, should have no answers, for they are useful only in two ways; first, as we have already intimated, as an introduction to enable the student to understand more comprehensive works: secondly, as a synopsis, to impress upon his memory all the chief points which are likely to be asked. In the first case he requires no questions at all, far less their answers, and in the

second, it is essential that he should be able to find out answers himself without any assistance.

To Mr. Indermaur's advice, which he offers to students respecting their course of study, we attach considerable importance, yet we fear he will frighten them with the number of books that they have to read on the subject of Specific Performance and Mortgage. We are reluctant to encourage students in buying books which, though perhaps useful for the time being, will be utterly useless to them afterwards.

To thoroughly comprehend the subject of Mortgage an intelligent student need only read Part IV., chap. 2, from Williams' *Real property*, or pages 183 to 209 in Goodeve's, together with the Dissertations in Prideaux's *Conveyancing*. An occasional reference to White and Tudor's *Leading Cases* will be eminently useful. With Specific Performance the case is very similar. Fry's is undoubtedly a magnificent work, but, owing to its bulk, few students will care to read it. We therefore feel inclined to suggest that Part III., Chap. 9, in Snell's *Principles of Equity*, together with reference to *White and Tudor*, and occasional reference, if possible, to *Fry*, will be sufficient to enable a student to understand well the general law of Specific Performance, and, we confidently believe, to answer satisfactorily any question that may be asked. Having read these books on the subjects of Specific Performance and Mortgage, he may, we believe, safely put aside the other books recommended as being superfluous for his purposes.

*The Student's Guide to the Law of Real and Personal Property.* By JOHN INDERMAUR and C. THWAITES, Solicitors. Geo. Barber. 1886.

Mr. Indermaur, as we have already had occasion to remark, possesses the great art of writing on uninteresting subjects in an interesting manner, and of this gift he has in the particular instance before us again given ample proof. We have no doubt that students will derive some benefit by reading this useful little book shortly before their examination. We concur with Mr. Indermaur in thinking that it would be of considerable use to students if the sketches on different subjects were consolidated and published as a complete "Guide to the Bar Final." We would, however, repeat what we have already said about the previous Epitome, that it would have been better had

it not assumed the question and answer form. For a student, on the eve of his examination, should test his knowledge by answering questions himself, so as to see how far he remembers what he has read on the subject. Besides, there is already in existence a more than sufficient number of question and answer books.

From Mr. Indermaur's advice, however, respecting the number of books to be read on Real and Personal Property, we feel obliged to dissent. For the Bar examination, in Real Property, there are two recognised text books set in alternative: Williams's and Goodeve's. If a student carefully reads one of these, together with a sketch of the Conveyancing and Settled Lands Acts, he will be competent to answer satisfactorily whatever questions may be set for the examination. Nor do we consider the examination for admission as a Solicitor any more difficult. Williams's *Personal Property* is generally recommended, but the book is far too large for a Pass examination, but few questions being set on that subject, so that a smaller work would be more appropriate for the purposes of the student.

*Simon Van Leeuwen's Commentaries on the Roman-Dutch Law.* Revised and Edited by C. W. DECKER, Advocate. Translated and Edited by J. G. KOTZÉ, LL.B., Chief Justice of the Transvaal. Vol. II. Stevens and Haynes. 1886.

Chief Justice Kotzé has now completed his valuable work, and gives us a complete Edition of Van Leeuwen's *Commentaries*, which will be of great use to practitioners not only in our South African Colonies and in Ceylon, where the Roman-Dutch Law obtains, but also before the Privy Council, in Appeals from those Colonies. In the Notes by the Translator, the student will find useful references to Austin, Maine, and other writers on Jurisprudence, and the practitioner will read with interest several Cape and Transvaal and Ceylon decisions, in which the most important parts of the Judgments are given in the *ipsissima verba* of the several Courts. The difference between the Roman-Dutch law in Ceylon and in South Africa, where it is noticed in those Judgments, arises from the Courts in Ceylon inheriting the older Dutch practice, while the Courts of South Africa have inherited its later form.

Many curious little touches of old Dutch life and manners in the Middle Ages and in the Renaissance period come to the surface, and enliven the otherwise severely grave pages of Simon Van Leeuwen. Thus we read of the *wynkoop*, or

wine drunk upon the bargain, which has to be paid for twice by one who exercises the *jus retractus*: the *Godspenning*, or earnest money; the marriage *penning*, a coin or token, usually of some rarity, given at espousal, but not in itself evidence thereof; and, in the way of curious cases, the quaint details of the single combat between Willem van Leeuwen (whom we may suppose to have been of the lineage of the Author of the *Commentaries*) of Alphen, and Boudyn Jansz. of Delft, High Dike Reeves of Rhineland, in 1363, and the very extraordinary leading case on Espousals of Gerard Bikkers *contra* Alida Koninks, which lasted from 1651 to 1656, when the final Judgment of the Supreme Court was rendered. In this last case, it is difficult to thread the maze of the several positions taken up at different times by Gerard Bikkers, Sheriff of Muyden, as to whether he did or did not of his own free will pay court to Miss Alida Koninks, and whether he did or did not simply yield to the sentiment of respect for his parents, who were strongly opposed to the marriage, in his various attempts to get his promise annulled. Judgments of Provincial Courts and of the Supreme Court give the upper hand now to Gerard, now to Alida; at one time the fair but somewhat forlorn damsel appears to have had a sort of right of veto on any marriage by Gerard with another than herself, so that if she could not, as it was put, exercise her right of marrying him for the present, she could at least secure that he should not marry any one else! Not the least curious feature of this interminable case—which, it may readily be understood, was at the time the talk of all Holland—is, that in the end, Gerard petitioned to fulfil his promise, and he was married to the long-suffering Alida, his “darling, his dearest, his well-beloved, his wife, and his future lady,” as he had in early days styled her, in the church of Muyden, where he was Sheriff, and in dutiful compliance with the sentence of the Supreme Court and the Doctors of Law. Let us hope that Alida’s constancy had its reward, and that the oddly parted, oddly mated couple lived happily ever after.

From other points of view, the fair sex has a considerable share in the interest attaching to the concluding volume of Van Leeuwen’s *Commentaries*. The learned Chief Justice, to whom we owe the present translation, both in his Notes and in the Appendix, which forms a substantive feature of the volume, discusses with great fulness the question of the extent of the privileges of the *S. C. Velleianum*, and the Authentic *Si qua*

*Mulier.* The general doctrine as to the suretyship of women is clear enough from the texts, as we may read them in the *Corpus Juris*. But on the question how far a woman can renounce the benefit of these provisions for her safety, and what formalities are necessary to establish such renunciation, there is no little conflict of opinion among the Commentators, and among their Judicial interpreters in South Africa. Chief Justice Kotzé prints the Judgments of Shippard, J., in *Whitnall v. Goldschmidt*, 3 Buch. E.D.C. Rep. 314; De Villiers, C.J. (of the Cape), in *Oak v. Lumsden*, 3 Juta Rep. 144; and Connor, C.J. (of Natal), in *McAlister v. Raw & Co.*, 6 Natal Rep. N.S. 10. The points involved are partly dependent upon intricate subtleties and dubieties as to the prevalence of the practice of Holland over that of other Provinces in case of inter-Provincial difference, and of the actual facts with respect to the practice of Holland in requiring, or not requiring, that a woman's renunciation of the benefits of the S. C. *Vell.* should be *in publico instrumento*. Chief Justice De Villiers incidentally remarks, somewhat by way of complaint, in his elaborate judgment (*u. s.*), that he can find little or no account of how the authentic *Si qua Mulier* came to be enacted. There is not much on the whole subject, as far as we can see, even in such recent writers on Roman Private Law as Salkowski and Muirhead. Nor do we find more than the bare statement of doctrine with the relative text in Rivier's valuable *Introduction Historique au Droit Romain*, with this exception, that he refers to a recent *ouvrage couronné*, by a distinguished French Jurist, Paul Gide, *La Condition de la Femme dans l'Antiquité*. As far as we have ourselves been able to form an opinion on the question, we certainly incline to the views, substantially identical, of Mr. Justice Shippard and Chief Justice Kotzé, to the effect that renunciation of the benefits, whether of the S. C., or of the Authentic, should be *in publico instrumento*, and, we believe, with the learned translator of Van Leeuwen, that the practice of Holland required such public renunciation, some quarter of a century after the alleged contrary opinion of Groenewegen. We have here only faintly shadowed forth an outline of some of the many topics of practical interest and importance in the living Roman-Dutch Law of South Africa and Ceylon, which are illustrated in Van Leeuwen's *Commentaries*, and in the Notes of his learned Translator. All who are interested in Roman Law as a living fountain of Jurisprudence owe a debt of gratitude to Chief Justice Kotzé.

# THE LAW MAGAZINE AND REVIEW.

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## I.—LAW AND SELF GOVERNMENT IN ORKNEY.

**I**T is not very generally known that Orkney and Shetland, until last century, exercised their own peculiar system of Provincial Government, at one time completely independent of the Imperial Courts, but latterly more or less reduced to the level of a Scottish Heritable Jurisdiction. To the last, however, the Insular Government retained many distinctive features of its ancient prerogatives, legislative and administrative.

In 1748, the “Stewartry” of Orkney and Shetland was, together with all Scottish Heritable Jurisdictions, abolished by Act of the British Parliament; and from that time to the present day these Islands have been subjected to the common government, law, and taxation of a Scottish county; and nearly every vestige of their ancient Constitution has since disappeared.

It will be remembered that, in 1468, the King of Denmark and Norway pledged the sovereignty of Orkney and Shetland to his future son-in-law, King James III. of Scotland, in security for part of the dowry of the Princess Margaret. Scotland was to retain legal possession of the sovereignty until the stipulated sum should be paid, and at first derived no pecuniary benefit from the Islands. It was undoubtedly the intention of the Norwegian King to redeem his pledge at an early date. There was no limitation stipulated as to the time of redemption. Those who take an interest in the

question of Norway's right of redemption, should consult the recent exhaustive Paper on that subject, contributed to the *Proceedings* of the Society of Antiquaries of Scotland by the Treasurer of the Society, Mr. Gilbert Goudie, who, in winding up, remarks that the non-redemption of the Sovereignty has left "a subject fertile in ingenious speculations in International Law." However, from the temporary nature of the pledge, and the conditions of the Instrument of Mortgage, it is generally acknowledged that, so far as the Islands were concerned, there was to be no change effected in the exercise of their native laws, customs, and other prerogatives. In 1567, a century after the Impignoration, an Act of the Scottish Parliament was passed confirming the laws of Orkney. From the foundation of the Earldom of Orkney and Shetland, by King Harald of Norway, in 872, these Islands had exercised legislative, fiscal, and defensive independence, as a constitutional and customary right, under the governorship of an hereditary line of Earls, the representatives—though often, no doubt, very nominal representatives—of the Crown of Norway. The Insular Parliament, anciently called the *Al-thing*, and latterly the *Law-ting*, like that of Iceland, acted in the double capacity of Legislature and Judicature—it administered the laws which it enacted. This assembly was composed of all the landowners (Udallers), and their kindred (Udalborn), and was presided over by an elected *Lawman*, who also acted as Chief Justice. Each parish had its combined Local Government Board and Justice Court, composed of the district landowners, and presided over by an elected *Law-right-man*, while the interests of general government were attended to by a specially appointed official. Matters brought before the *Al-thing* for its decision, were first tried by the judicial bench of *Lawman* and *Law-right-man*, whose award was subject to the approval of the full assembly.



Formerly a native court, called a *Schoind*, or *Schownd*, composed of the Chief Judge and a Jury of neighbours, decided all questions of succession, division, and alienation of lands; anciently by a *viva voce* doom, but latterly by a *Schoind* Bill. This court has long since ceased to act. At the present time, therefore, there is no special form of written legal certificate of Udal ownership to be procured; but this defect can be made good by the modern Udallers *serving themselves heirs in general* to their predecessors, which has been accepted as a sufficient proof of legal ownership. The infestment following upon a precept of Chancery, where the successor *serves himself heir in special*, has been held by the Sheriff Court of Orkney, to feudalise Udal lands; but it is more than probable that this decision would be reversed if brought before a higher Court, there being so many of the necessary Feudal requirements wanting in such a process.

The ancient Laws of the Insular Government, the record of which was called *the Book of the Laws*, or the *Lawbook*, like those of Iceland, seem to have been exhaustive in their local regulations, and the upholding of good neighbourhood and personal honour. But an accurate account of these laws cannot now be given, as the Lawbook exists no longer; it is said to have been deliberately burnt by one of the Scottish Governors, in order to have a new code compiled, the better to aid him in his oppression and extortions. Sufficient material, however, exists in contemporary documents to enable us to arrive at the general nature and scope of these laws.

The whole principles of Northern law were founded upon *Udalright*, as opposed to *Feudalism*, its negation. Udalism essentially means democracy as the mainspring of Government; freedom, independence, and individual equality, as opposed to hereditary Lordship and servitude. Udalism, however, produced a truer and more spontaneous and natural recognition of personal worth and fitness, and



therewith a more loyal obedience, than could be elicited by Feudal hereditary superiority. Independence, equality, and manhood suffrage, have usually been the distinguishing characteristics of the Teutonic race ; while vassalage to a Feudal Lord belongs to the Celt ; and then the Lord not unusually is a Teuton, *e.g.*, the leading families in Ireland and the Highlands.

In the early vigour of Udalism, as in every other institution, there were many customs which, in keeping with its spirit, were suitable to the requirements of the time in which they were practised. Thus, at the time of the first settlement of Orkney and Shetland by the Northmen, their estates were large enough to make it natural and necessary that all children should inherit equally ; but, when by the increase of population, the practice of equal division among children resulted—as it has in other countries, *e.g.*, France and Italy—in the partition of lands down to mere patches insufficient for the maintenance of their owners—then, what had formerly been practical, in time became a source of the utmost poverty. In the case of Norway, and kindred Scandinavian countries, the law of Udal inheritance has been free to adapt itself to changing circumstances ; but, in the case of Orkney and Shetland, the conditions of the transfer to the Crown of Scotland succeeded in stereotyping their laws. If anything, the Scottish Governors of the Islands rather aggravated the progress of decay, and the minute subdivision of lands made their helpless owners an easy prey to the tacksmen of their new sovereign.

It may be noted here that Scotland acquired a local interest in the Islands, by the acquisition from the last Norse Earl of his office and prerogatives, with the consent of the King of Norway. From the very first, down till 1748, the Earldom was farmed, feued, and mortgaged at times by the Scottish Crown to various sets of courtiers, for a substantial rent. The chief object of these lessee-

governors, or Bashaws, as they were called in the Islands, seems to have been to "stress the Udallers," to weaken the native Constitution by aggravating antiquated customs, and arbitrarily and fraudulently to increase the taxes, so as to get as much out of the Islands as possible during their lease. "Since they were severed from the kindred rule of Norway, their history has been a continuous tale of wrong and oppression, of unscrupulous rapacity, and unheeded complaint."—(Balfour's *Memorial for Orkney*.)

Let us now briefly glance at the distinctive features of these old Orkney Laws, so far as we may now trace them.

*Franchise.*—All landowners (Udallers), and those of Udal descent (Udalborn), were hereditary members of their one-chambered Parliament, with an equal voice and vote with King, Earl, Bishop, and Lawman. Their lands might be sold, but still they and their descendants retained their inalienable *Udal birthright* and franchise as *Thingmen*.

*Land-tenure.*—Land was held by simple possession, under no superior, not even the King, and without writ or title-deed. The expenses of government were defrayed by a tax (*skatt*) on the cultivated lands, corresponding with the Scottish Land-tax. *Inheritance.*—Brothers and sisters inherited by equal portions; the eldest son obtaining the family mansion (*Head-Bu*). *Entail.*—No land could be sold; it could only, in cases of absolute necessity, duly certified by the proper authorities, be temporarily alienated, with the imprescribable privilege of the alienator and his heirs redeeming their heritage (*Udal*) on payment of the amount for which it was originally alienated. *Crime.*—Certain offences were "expiable by compensation or damages to the injured party, or by Mulcts shared between him and the Crown, which derived no small part of its revenue from this source"—(Balfour's *Memorial for Orkney*). Other crimes were punished by death, exile, or forfeiture.

Until 1611, the Scottish Governors had, by the express stipulation of their Commissions, to administer justice according to the laws and customs of Orkney and Shetland.

One of these Governors (Earl Patrick Stewart) made away with, or destroyed, the whole Records of the ancient laws of the Islands, and began to compile a new Code. In 1609, Earl Patrick was "committed to ward within the castle of Edinburgh for certain oppressions, injuries, and wrongs committed by him upon his Majesty's good subjects of Orkney and Zetland."—(Minutes of Privy Council.) In 1610-11, Earl Patrick and his deputed, etc., were removed from the government of the Islands, and the Acts which he had passed were abrogated. In 1611, Sheriffs and Commissioners were appointed by the Privy Council, with power to "prescribe, and set down Acts, Statutes, and Ordinances . . . and to convocate and assemble the haill inhabitants within the saidis boundis, to concur and assist thame." The Sheriff Courts of Orkney and Shetland continued to exercise this power of legislation; and their Acts, usually called the Country Acts, were administered down till the end of last century, but have now fallen into disuse. After the disappearance of the Lawbook, the Islands were brought under the Common Law of Scotland, together with the Country Acts passed by their Sheriff Courts. The old *Law Ting* was thus, in many respects, transformed into a Scottish Sheriff Court; all the Udallers, or "Commons," and feuars, had to give "suit and presence." At the last, almost the only remnants of the old *régime* were the legislative powers exercised by the so-called Sheriff Courts of Orkney and Shetland. Udal land-tenure, however, is still recognised by Scottish Law as "consuetudinary," so that Udallers, upon succession to lands, have simply to take possession, without having, by law or custom, to go through any sort of *service whatever*.

All the lands of Orkney and Shetland are *udal*. Where these, however, are held in *feu*, their charters carefully recite and confirm their *udal* privileges. These privileges include rights of Commonalty, “from the highest stone in the hill to the lowest in the ebb,” minerals, lakes, fishings, hawkings, huntings, rabbits and rabbit warrens, and woods; together with “royth, aying, and saming”—*rædi* = rule, *eign* = possession, and *sæmd* = honour, well expressed by the late Colonel Balfour, as imparting that the Udaller was “Master of his Household, his Goods, and his Honour.”

The following extract from a *Note* to an *Interlocutor*, in a local case,\* recently delivered by Sheriff Thoms, will be interesting as illustrating the legal recognition of Udal rights:—“In Orkney and Zetland the foreshores belong to the riparian proprietors, as all the lands are *udal*, or *allodial*. Even where they have completed a Crown title to their estates, they get their properties confirmed to them as udal properties. . . . They thus have the salmon fishings, and rights of wreck, and ware and foreshores which the Crown, as the allodial proprietor, has in other parts of Scotland.”

The old Udal custom of succession, by which brothers and sisters inherited lands equally amongst them, appears now to have fallen into complete disuse, and the Scottish system of primogeniture to have taken its place.

In contradistinction to the old laws or Lawbook, those passed after the disappearance of the former are called the “Country Acts of Orkney and Shetland,” or otherwise the “Acts and Statutes of the *Law-ting* Sheriff and Justice Courts.” A brief examination of those referring to Orkney will be sufficient for our present purpose.

In a court held in the Cathedral of S. Magnus, on the 30th July, 1612, among other regulations is the following:—

\* Shetland Sheriff Court; *Pottinger v. M'Combie*.

“The quilk day It is statut and ordanit that the saidis magistrattis and Counsell [of Kirkwall] sall assist and fortifie the minister and session of Kirk for putting to execution of all acts and statutis made be thame for mentenance of Godis glorie the edificatioun of the Kirk and pwnishing of vyce within thair jurisdiction.” It must be understood that during the establishment of Episcopacy, the Bishopric of Orkney was a Regality, with a civil Jurisdiction and courts independent of the Earldom. On referring to the Records of the Cathedral of S. Magnus, we find the following amongst other regulations:—“1618, Item, That all scaldis, bairdis, slanderers, and persons offensive to their neighbours be speiche, pay 40s. and sit in the cockstuillis the space of four houris.” But very practical is the following:—“1619, May 23.—Qlk. day my Lord Bischoop, with advyse of the sessione, hes concludit that the kirk sward sall in no wayes be broken quhill [*i.e.*, until] the burial silver be first payit.” To return to the Sheriff Court, there is a Statute of 1615 which appoints the way in which the inhabitants are to be convened to Court, etc., a curious relic of the past. “It is statut and ordanit . . . that ilk hous and familie sall carefullie and diligently direct the corse [cross] according to the order and custome to his nixt nichtbour with ane sufficient bearer for admonishing the people ather to conveyn to Kirk . . . or for his Majestie’s service, and sick uther necessar causis as sal be thocht expedient be the Minister, shirreffis, and justiciaris, or thair baillies, and sall not stay nor lay down the samen, bot direct it with all diligence upon the recept thairoff.” In the old *Al-thing* days Courts were convened in the above manner, the emblems being—an *axe* for a Court of Justice, an *arrow* in matters of urgency, a *staff* for ordinary matters, and a *cross* for Church affairs. In the Acts of the Sheriff Court there were numerous regulations as to the proper use of the

commonly or hill-pasture, the building and repairing of hill-dykes, and gates, etc. It was illegal to engage a servant who had not been discharged by his last master, or had not given notice forty days before any term. One of the most curious Acts was that “anent *rancelling* for Thift. —Item it is statut and ordanit for eschewing and tryell of thift in time cumming that it sal be lesum to the pairtis interest with the baillie or officiar of thair parochin or tua or thrie honest men to be chosin be him to *rancell* search and seik all housis and suspectet places.” Those men employed to *rancel*, were called *Rancelinen*, or *Rancellers*; they exercised much more extensive powers in Shetland, where they had also to see after the moral and spiritual welfare of their parishioners. With regard to beggars, “fforsameikle as it is heavily compleinit by the inhabitants of Zetland of the great resoirt and repair pairtlie of sturdie beggeris and pairtlie of puir vagabonds from Orkney Cathnes and uther forren places quha sorns beggis and overlayis the countrey begging pyking steilling and oppressing the inhabitantis thairof. Thairfoir it is statut and ordanit that na master of ship bark bott nor crear transport ony sik persones.” A witch was tried, and condemned “to be wirryet at ane staik quhill she be deid. And thereafter to be burnt in assis” (1616). In 1623, the price at which wine and ale were to be sold was fixed by statute:—“No sort of wyne sall be sold of ane greater pryce nor they sell the samyn in the burgh of Edinburgh.” It was ordained that “nae ale be sold to ane higher pryce than 6d. the pynt of 4os. malt, 7d. the pynt of £3 malt, and 10d. the pynt of £4 malt, 12d. the pynt of £5 malt, 13d. the pynt of £6 malt, and sua forth accordinglie under the paine of 4os. *toties quoties*.”

In 1623, it was forbidden to sell fish to exporters, between the 1st of February and the last of May, yearly, “that they preferre ther nighbouris and sell their saids fishes to the

countrie people for that necessitie and Intertainment." Farms were not allowed to be let to tenants who did not possess a stipulated amount of capital to stock them. The defence of the Islands, and giving warning of invasion by wardfires, were carefully regulated. By Statute in 1636 (on account of the scarcity of servants) they were forbidden to leave the country without special government license. By Statute, 1640 (servants still being scarce), it was permissible for the parish baillie to take servants from those who had too many and give them to those who had too few. Acts for the construction and repair of roads and bridges were passed. The present notes may be concluded by an extract from the Country Acts of Shetland, 1612:—  
 "Forsameikle as thair is monie serviabile persons that mareyis and takis up housis nocht having wherupone to live, wherby the inhabitants and indwelleris in the countrey ar damnefest and hurt for lack of servantis; thairfor it is statut and ordaint with consent of the gentilmen and comowins of the countrey that it sall not be lesum to servile persones not worth three skoir gulzeonis quhilk is 72 pundis Scottis to tak up houssis nor no man to set to them houssis or land."

The Government revenues of Orkney and Shetland were derived from the *skatts*, or landtax, paid by all arable lands, the rents of Earldom property lands, feu duties, teind duties, and from fines and forfeits, etc. Notwithstanding that the Islands continued to pay the Norwegian landtax, the Scottish landtax has been exacted besides; regarding this grievance, which exists to the present day, there has been a constant complaint and protest on the part of the landowners, who are thereby subjected to a double landtax. At the date of the abolition of the "Stewartry" of Orkney and Shetland, the Earl of Morton (who was then "Stewart" of the Islands), was allowed to retain, as his private estate and revenue, the whole Earldom lands, duties, *skatts*, and

all other casualties, besides receiving a sum of £7,000 odd in compensation for the abolition of his jurisdiction. The Islands are now subjected to the local and Imperial taxation of a Scottish County ; so that they have to pay a double taxation, besides being deprived of all their public lands and revenues. They pay the old Norwegian as well as the Scottish Land-tax. Their Church lands have all been sold by the Commissioners of Woods and Forests, and the proceeds, amounting to £50,465 17s. 9d., granted to the London Parks and other non-local and secular purposes.

To conclude with one other quotation from Balfour's *Memorial* :—" Unthrifty greed has loaded the Land with unjust burdens and undue taxation, has impoverished the Owners with unexpected claims and vexatious lawsuits. . . . But no misrule has yet exhausted the fertility of the soil, or crushed the energy, or worn out the patience of a people still struggling against an evil destiny, but still amenable as ever even to the semblance of lawful authority."

ALFRED W. JOHNSTON.

## II.—JUDICIAL REFORM IN EGYPT.

IT is now nearly two years since we laid before our readers a sketch of the Judicial Organisation obtaining in Egypt, endeavouring at the same time to indicate those reforms which appeared to us requisite in order to render more efficient the administration of Justice in that country. Since that time, an elaborate Report, drawn up by Sir Henry Drummond Wolff during his mission as British High Commissioner, has been presented to Parliament, emphasising in the strongest language possible the desirability of carrying out the leading modification contended



for by us in the Paper above adverted to, viz., the transference of the Consular Jurisdiction to the International Tribunals. But, so far as we have been able to learn from an examination of the official despatches hitherto published, no practical measures have yet been taken in that direction.

Upon the 1st of February, 1889, the period to which the duration of the International Tribunals is limited will come to an end, and therefore the Powers which assented to a partial abandonment of their privileges, by endowing the Reformed Tribunals with a portion of the jurisdiction appertaining to their respective Consulates, will very soon be called upon to decide whether those Tribunals shall cease to exist, or whether they shall be continued subject to any and what modifications in their composition and jurisdiction. There is really no time to be thrown away, for, should the 1st of February arrive before the Powers have come to any understanding upon the matter (as is not at all unlikely), one of two results will almost certainly ensue. Either the Consular Courts will resume so much of their jurisdiction as has been transferred to the International Tribunals, or the latter will be continued for a further period with their present restricted functions and defective organisation. We do not, however, think that a return to the *status quo* is likely to take place.

In establishing the International Tribunals the first step was taken towards the abolition of Consular Jurisdiction,\*

\* As to the origin of the system of Capitulations, see the learned disquisition by Sir Travers Twiss in *Annuaire de Droit International*, 1882—3, pp. 244—256. [See also, *Law Magazine and Review*, No. CCXXX., for November, 1878, Art., *Law in Cyprus*; No. CCXXXI., for February, 1879, Art., *Cyprus and the Capitulations*; and No. CCXXXIII., for August, 1879, Art., *The Capitulations of Lesser Armenia*; and for an American account, cf. Mr. Secretary Bayard, in Wharton's *International Law of the U.S.A.*, Vol. III., App.—Ed.]

and even their most implacable foes will not contest the fact that the introduction of these Courts into Egypt is a considerable improvement upon the Jurisdiction which they to some extent superseded. The International Tribunals have 'become' so important a factor in the Political and Commercial regeneration of that country that it is far from probable that the Governments which originally assisted in their formation, and whose favourable anticipations they have so largely realised should allow them altogether to disappear. Rather, let us hope, will the occasion be seized for bringing into operation a broad and statesmanlike scheme of reconstruction whereby, with an extended field of action, and a permanent tenure of existence, they may continue to augment and develop that beneficent influence which it is pretty generally acknowledged they have up to the present, though in a restricted sphere, exercised. The moment, therefore, appears to us not inopportune for reverting to this important topic, and for again directing attention to those ameliorations in the Judicial machinery of Egypt which are essential to place it upon a sound and permanent basis.

It is needless to go over again at length the ground previously traversed\* in explaining the varied constitutions and jurisdictions of the Courts which mete out justice to natives and to foreigners. It may suffice to repeat that there are three sets of Courts, viz., Indigenous, International or Reformed, and Consular. To the Indigenous Courts all Civil and Criminal proceedings where the whole of the parties are natives are relegated. The jurisdiction of the International Courts extends to Civil and Commercial suits between natives and foreigners and between foreigners of different nationality except where the "*statut personnel*"

\* *Law Magazine and Review*, No. CCLXII., for Nov., 1886, Art., *England's Work in Egyptian Law Reform*, by B. L. Mosely, LL.B.

(i.e., marriage, paternity, affiliation, guardianship, succession, gifts and testaments) is concerned, and in Criminal cases is limited to what are called "*contraventions de simple police*," and to acts coming within the category of contempts of Court. The Consular Courts are competent to entertain Civil suits between foreigners and Criminal cases where the Defendant is a foreigner, when such proceedings are not within the competency of the International Tribunals.

The salient defect in the present organisation is its multiplicity of jurisdictions, but this is an evil that has baffled all efforts to remedy owing to the International tutelage under which Egypt rests. Recognising that this state of things urgently requires amendment, it has been proposed by some with a view of destroying the Capitulations and therewith the maleficent immunities enjoyed by foreigners, to fuse the Consular and International Courts, whilst others, whose cry is "Egypt for the Egyptians," desiring to see the International subjected to the National element recommend the amalgamation of the International with the Native Tribunals.

Other schemes have been put forward, amongst which that of M. Gaston Privat,\* formerly a magistrate, and now an Advocate practising before the International Court at Alexandria, is deserving of consideration as coming from one possessing experience at first hand of the working of the present system. M. Privat is not very sanguine that either of the above-mentioned projects will be adopted in the near future, as, in his opinion, a multitude of considerations, political, social, ethnographic, and even juridical, militate against the acceptance of any of them. He, therefore, recommends a combination of the two schemes, which, whilst maintaining the native and foreign

\* *Journal du Droit International Privé*. Paris: Marchal et Billard. Edited by E. Clunet. 1887. p. 521.

jurisdictions, " tends to give them an International character. He proposes to strengthen the Native Tribunals by placing each under the direction of a European, seeing that the Western in general is endowed with capacities for exercising judicial authority, which in the Oriental are almost always wholly wanting. The Presidencies of the Courts and Tribunals, as well as other minor offices, should be held by persons of a nationality whose Judicial institutions are in harmony with the new Codes. He would, further, have French take its place beside Arabic as a second Judicial language. Under these conditions, he thinks the Native Tribunals would in course of time produce satisfactory results.

M. Privat does not disguise from himself the hindrances to order and good government which are involved in maintaining the Capitulations as they at present exist. On the contrary, he fully admits that the lowest *strata* of European Civilisation seek refuge in Egypt, counting upon escape from punishment for misdeeds by reason of the weakness or connivance of the Consular authorities. He recognises the necessity for placing the administration of Penal legislation in the hands of men of strict integrity and independence, such as he says are to be found amongst the Judges of the International Tribunals, so as to raise the standard of public morality, which, as regards some nationalities, has fallen to a very low ebb. He looks forward hopefully to the time when there shall be but one Common Law, administered by all tribunals, but at present he thinks so thorough a change impracticable. He would, therefore, extend the Criminal jurisdiction of the International Tribunals to cases where the prosecutor is a foreigner, whatever might be the defendant's nationality, enabling them to redress injuries to property, and to punish breaches of commercial probity which are provided against by European Codes. He would invest them with

power to deal with crimes and delicts discovered in the course of a proceeding had before them and connected therewith, but until these Courts have given proof of their success in exercising their enlarged Criminal functions he would withhold from them the jurisdiction to try offences against the person now possessed by the Consular Courts. In consequence of this extension of jurisdiction, M. Privat proposes that the number of European Judges should be increased, and in order to render the tenure of office in the magistracy less precarious, he would have the Presidents appointed for three years. Amongst the minor, though not unimportant, changes which his scheme includes are: (1) the immediate extension of the lease of life of the International Tribunals to 15 or 20 years; (2) the creation of an International Tribunal for settling questions of disputed jurisdiction arising between International and Native and between International and Consular Courts. This Tribunal should be constituted by two Consuls General or Consuls chosen by the fourteen Consuls General, two European members of the International Court, selected by the Court itself, and two members of the Native Court of Appeal, with the Minister of Justice for President. If these proposals, accompanied by a revision of the Codes in the sense indicated by him, were to be adopted, M. Privat believes that credit would revive, the confidence of suitors would be strengthened, and the purifying influence of a sound administration of Justice would make itself profoundly felt.

Closely resembling that of M. Privat is the scheme propounded by the late M. Martin-Sarzeaud,\* himself till recently a Judge in the International Courts. He, too, had no very high opinion of the Judges constituting the Native Tribunals, as he tells us that "their integrity is not above

\* *Journal du Droit International Privé*. 1886. p. 270.

suspicion." Seeing, however, that he was compelled to resign his post and returned to France overwhelmed with debt,\* it would appear that there are Judges other than native whose "integrity" may be open to question. It is only fair to add, however, that his strictures upon native corruption are borne out by a Report made to and forwarded by Sir Evelyn Baring so recently as June of the present year, wherein, with a frankness quite refreshing, it is confessed that "among the officials connected with the Native Law Courts venality is, according to independent accounts, as prevalent as ever, and the fellaheen complain (with cause) that there is one law for the rich and another for the poor."† Whilst admitting that the International Tribunals have been regarded in some quarters as too independent, and that a desire has manifested itself in favour of the European Judges being freely chosen by the Egyptian Government, without the intervention of Ministers of other Governments, M. Sarzeaud nevertheless claims for the International Tribunals that they have, on the whole, given satisfaction. A fusion, pure and simple, of the two jurisdictions would, in his opinion, inevitably lead to the disappearance of the salutary Judicial traditions introduced by the European element, and which constitute the moral backbone of the International Tribunals. For, as he points out, the small number of Belgian and Dutch Judges who are connected with the Native Tribunals and their European brethren in the International Tribunals, even when taken together, would form but an insignificant minority amongst their colleagues of the local Tribunals, and, consequently, the jurisdiction of the Reformed Courts would be swamped by that of the Native Courts. Such a result, it is admitted on all hands, is not one to be aimed at. To avoid a fusion, therefore, M. Martin-

\* *Times*, April 13th and 15th, 1887.

† *Parliamentary Papers. Egypt.* No. 6 (1 p. 13

Sarzeaud proposed only to connect the Native with the International Tribunals. Under these conditions, he maintained that the reformed Judicature would only undergo such modifications as experience and the extension of its jurisdiction render expedient. To each International Court of Appeal and Tribunal of First Instance a Native Court, constituted in the same manner as the International Tribunals, and exercising concurrent jurisdiction, should be attached. The Presidency of such Native Court should be given to a European and a rota of European Judges required to sit in both sets of Tribunals should be drawn up.

It will already have been noticed that M. Martin-Sarzeaud's scheme differs from that of M. Privat in the connection which he would establish between the Native and International Tribunals. Another minor divergence is the proposal of the former to institute a Court of Cassation, to which appeals should be carried from the other Superior Courts, thus preserving uniformity of decision. Such a Supreme Court might be constituted, say, of seven Europeans, to be appointed by the Egyptian Government upon the nomination of the Great Powers, and of four natives selected from the members of the Court of Appeal. But he would hardly be a Frenchman did he not insist upon the retention of the Capitulations as the corner-stone of the Reformed Judicial edifice.

Whilst not indisposed to consider a combination of the two plans above sketched out as possible bases for further reforms, we are inclined to give the preference to that elaborated by the learned and impartial author of *L'Egypte et l'Europe* (Paris. 1881), which contemplates a complete fusion of the Native and International Tribunals, with Courts of First Instance at every important centre and a Court of Appeal stationed at Cairo. There is, we think, unanswerable force in his objection to having two jurisdictions, neither of which is founded upon the division of

territory nor yet upon the matter in litigation, but simply upon the nationality of one of the parties. We must confess that any project would in our eyes fall far short of what is urgently needed which did not include the suppression of an institution, the maintenance of which is both a perpetual stumbling block to the enforcement of Law and Order, and a deplorable derogation from the sovereign rights of the Egyptian Government, we mean, of course, the Consular Jurisdiction. The upholders of this Extra-Territorial jurisdiction point to it with pride as signalling the victory of Western Civilisation over Eastern Barbarism, and the triumph of an enlightened system of Jurisprudence over the inconvenient and impracticable exclusiveness of the Moslem Code. We cannot bring ourselves to regard it exactly in that light. Nor has anything happened since we last commented in this *Review* upon the abuses of which the Capitulations are the *fons et origo* to detract from the arguments and assertions which we on that occasion advanced in its pages. On the contrary, the reports both from sources official and non-official which have reached this country since that time confirm the views then put forward to the fullest possible extent. Sir Henry Drummond Wolff, whose despatches relative to the present condition of Egyptian Institutions are second only in exhaustiveness to those of Lord Dufferin in 1883, joins his testimony to that of all the other genuine well-wishers of Egypt in deprecating their continued existence. Tracing them back to their source in previous centuries, and exhibiting the arbitrary extension of Judicial power usurped by the Consuls in recent times, he details fresh instances of the complications, delays and denials of Justice of which the Capitulations are productive. He does but repeat the conviction of all who have studied the question when he tells us that they give to foreign communities in some respects almost sovereign rights,\* are

\* *Parliamentary Papers. Egypt. No. 7 (1887), p. 62.*



destructive of the first principles of Order and good Government, that the mode in which they are carried out is inconsistent with that harmony of purpose and conduct which alone can preserve Egypt from the antagonisms so prejudicial to its peace and progress,\* and that they are full of hardship even for those whom they are intended to protect, and can recommend themselves to none but the criminal classes, for whom they open out places of refuge from the consequence of their misdeeds.† Smarting under the indignity to which the Capitulations subject them, and the impotence to which they are thereby reduced, the Egyptian Government have for more than twenty years endeavoured to impress upon the Great Powers the necessity for their abrogation, and so convinced was Lord Salisbury's Cabinet of the obstacles they present to all genuine progress in the path of reform, that the Convention entered into between this country and Turkey in May, 1887, for the Neutralisation of Egypt, but which, owing to the threats and machinations of France,‡ was never ratified, embraced a special Annexe, couched in the following terms:—"Considering that the Capitulations and the usages and customs in force in Egypt by exempting foreign criminals from territorial jurisdiction weaken the authority of the Egyptian Government, and render the maintenance of order difficult, to the detriment not only of

\* *Parliamentary Papers. Egypt.* No. 7 (1887), p. 64.

† *Ibid.* No. 5 (1887), p. 9.

‡ *Parliamentary Papers. Egypt.* No. 8 (1887), p. 13. We refer especially to the memorable despatch from Count de Montebello to the Sultan, in which he talks about the French Government taking such measures as may in their opinion be necessary for protecting their interests, which, in case of the ratification, would be impaired by the destruction of the balance of power in the Mediterranean, undertakes to hold Turkey harmless if she will but refuse to ratify the Treaty; and winds up with an assurance that France's disinterested policy in the East is the only sure safeguard against the encroachment and ambitious aims of perfidious Albion.

the natives, but also of foreigners residing in Egypt, it is understood that within a month from the date of the ratification of the Convention, Her Majesty's Government and the Government of the Sultan shall invite the European Powers who maintain the Capitulations to consider means of bringing their subjects under local and uniform jurisdiction and legislation." \*

Why, as Sir Henry Wolff pertinently enquires, should the Capitulations be retained in Egypt since they have been given up in Cyprus, in Bosnia, in Tunis,† in fact, in every place where a European Power has assumed the Government of a portion of the Ottoman dominions?‡ The answer is that Egypt is still burdened with a survival of the immoral and narrow-minded policy pursued in the Past towards Eastern countries by Christian States of looking in this as in all things solely to the interest of the commerce of their fellow-countrymen, of their co-religionists, of their missionaries, and of their creditors, treating Orientals as enemies who are to be contemned, and against whom every kind of precaution should be taken. Who is most to blame in the present instance? At the head the nations responsible for the perpetuation of the present intolerable state of things stands that Power which in a

\* *Parliamentary Papers. - Egypt.* No. 7 (1887), pp. 58-9.

† *Ibid.* No. 5 (1887), p. 9.

[‡ We must remind our readers that there is another answer to Sir Henry, Drummond Wolff's question, very different from that of our valued contributor. viz., that no European Power has as yet assumed the government of Egypt. How far, technically, it may be correct to say that France administers the government of the Regency of Tunis, we take to be technically a moot point. But the Capitulations have been only suspended, not abrogated, in Tunis, as is admitted in the *Annuaire de Législation Française*. Paris. 1888. p. 159, n. 7. Even where European Powers, like Austria in Bosnia and Herzegovina, and Great Britain in Cyprus, *de facto* administer, they do so *de jure* as administrators of the Government of the Porte, which, it is submitted, has not formally relinquished a part of what it considers to be still Ottoman soil.—ED.]

bygone age obtained by means of the Capitulations an unrivalled influence in the East, and whose flag floated over the Levantine commerce of the whole European world,—our former colleague, France. Vexed at the course events have taken since Gambetta refused to take part with us in putting down Arabi's insurrection, and having discovered, when too late, that her abandonment of the Dual Control diminished her opportunities for imposing her wishes upon a fanatical but feeble race, she has sought to reconquer the position she had voluntarily renounced by resorting to means unworthy of any nation which can boast of honourable traditions. In her suspicious and envious mood she has allowed, without sign of remonstrance, her semi-official organs at home and abroad to raise a wild outcry against the greed, cruelty, and corruption of those called upon to administer the law. She has permitted them with impunity to lead the French people to suppose that our object in staying in Egypt was to filch from her sons the fruits of their enterprise, that we had been endeavouring to sow hatred between them and their former dependents, that our attitude towards France was one of insolence, suspicion, and outrage, and that we were carrying on against her unfriendly and perfidious controversies. She has supported French officials and the French community resident in Egypt in their endeavour to humiliate Egyptian Ministers, and in their arrogant and presumptuous pretensions towards ourselves. She has held harmless, if not subsidised, Egyptian Newspapers which never ceased to direct against us attacks and calumnies, openly and extravagantly indulging in insulting, defiant, and inflammatory language, pandering to the prejudices and antipathies of the most ignorant class of Egyptians, and inciting them to insurrection. Whilst France has been doing her best to teach the *Fellah* to despise our administration of the law, what chance was there of making any real progress in the reforms we inaugurated?

In spite of our good intentions, we have no doubt done some acts of questionable benefit to Egypt. Against those acts, France has exclaimed, it may be, but she has never raised a finger in support of Humanity. She has been content to note and exaggerate our blunders, cynically recognising that, though Egypt might suffer, French interests were perhaps strengthened thereby. But when real good seemed likely to be effected, when England tried to reduce the debt charges, to tax Europeans, to modify the Capitulations, or to abolish the *Corvée*, France saw that we were approaching success, that we were benefiting the people, and were likely to become popular, and then the whole weight of French influence was employed to stay the hand that would remove the burden from the country and its people. It is doubtful whether History can show a much darker page in the annals of any country.\*

Whilst clamouring for the speedy withdrawal of our troops, France has spared no effort to thwart those measures which we have taken for maintaining and restoring internal order in Egypt. In a recent article entitled, "The present position of European politics," attributed to an ex-Cabinet Minister, the situation is thus summarised:—"The present position of the question is, that when the French ask us to name a date for leaving Egypt, we reply that it is impossible for a weak native Government to rule the country so long as the low-class Europeans who inhabit Alexandria in great numbers, and in lesser degrees in the other towns, cannot be dealt with by the ordinary law; and as it is known that the French object to modify the Capitulations so long as we remain in Egypt, we in turn charge them with doing nothing to facilitate our leaving it, but, on the contrary, with making the difficulties which are the cause of our staying there."†

\* *Times*, February 18th, 1887.

† *Fortnightly Review*, February, 1887, p. 177.

Again, the writer forcibly urges :—" If the French Government would give up the Capitulations and replace them by a proper system of police and a just criminal law, evacuation or neutralisation at an early date might indeed become possible." \*

Lastly, he says :—" France protects seditious newspapers published by French subjects; she insists on maintaining to the letter the Capitulations by which the Administration of Egypt, not only by England, but after England is gone, should England incline to go, is rendered dangerous in the extreme." †

France has unquestionably great interests in the East, but she would, we venture to think, be better consulting them if she were to curb her ambition of dominating over those Institutions which England is striving to endow with elements of stable independence.

Nevertheless, France deserves some credit for her share in instituting the International Tribunals. With their establishment, a higher notion of International duty supervened, according to which civilised nations undertake the guardianship of, and seek to raise to their own level a people at a far lower stage of advancement. No better means, as M. Hornung justly observes,‡ can be employed to that end than to introduce by agreement with Foreign Powers a European element into the Egyptian Administration and into its Tribunals by way of educating the Egyptian people in Judicial institutions. Thus, too, the interest of all parties is conciliated, *i.e.*, that of local sovereignty with that of commerce and civilisation. But it will readily be guessed that in parting with a modicum of her Consular jurisdiction to the Tribunals, she took good care that her ascendancy over them should be not incon-

\* *Fortnightly Review*, February, 1887, p. 181.

† *Ibid.*, p. 182.

‡ *Annuaire de Droit International*. Bruxelles. 1882-3. p. 233.

siderable. Hence it is that the Judges interpret Codes imitated from the French, speak the French language, and apply French rules of practice. We have before pointed out that, if the testimony of our own experts is to be believed, these Codes\* are unsuited to the needs of the Egyptian people, and should be replaced by a system based upon our own Anglo-Indian system.\* Even M. Gabriel Charmes, who would fain see Egyptian Institutions completely Gallicised, admits† that they were completed with so little deliberation, or rather, vamped up, so to speak, so hastily, as to present a mass of imperfections and incongruities. To fill up obvious gaps and to smooth down glaring contradictions, it was provided "that in cases of omission, deficiency, or obscurity, the judge should apply the principles of natural justice and the rules of equity,"—a direction sufficiently elastic to allow the Bench to subject Legislation to every modification which might suit their own convenience. Further than that, Article 12 of the Civil Code declared "that additions to and modifications of the present law should be made in accordance with the views of the Judicial Body, and when necessary at its requisition:"—thus confusing the Legislative power with the Judicial, and inviting the new Tribunals to imitate a Parliamént of the *ancien régime*, on the one hand, registering laws, and on the other hand, entitled to oppose their promulgation. In vain might the Egyptian Government protest that "in creating these Tribunals the Great Powers never intended to subordinate legislative measures of general application to their sovereign control." In vain might it declare that "the decision of a Judge is entitled to demand the respect of all; in its own sphere everyone must obey it, and it is the duty of the Government to set an example of such submission; but

\* *Law Magazine and Review*, No. CCLXII., for Nov., 1886, p. 17.

† *Revue des Deux Mondes*. 1880. p. 282.

that in the sphere of Legislation it is the duty of the Government to assert its own independence." In vain might it explain "that Article 12 had reference to certain special and exceptional cases, such as when an addition or modification of one or more Articles of the Codes were in question, but that it had no application in other cases, as, for instance, when the necessity arose for making regulations regarding public order and decency, and that any infringement of the rights of foreigners which such a measure might occasion could only be decided in consultation with the representatives of the Powers." On several notable occasions the Courts have refused to recognise any interpretation of this Article save that which they had placed upon it. To cite a recent instance:—The Egyptian Government issued a Regulation with respect to Prostitution. A woman, of Italian nationality, having committed a breach of that Regulation, was charged before the Criminal Division of the International Tribunals and found guilty. Upon appeal, however, the decision of the Court of First Instance was annulled by a judgment of the Court of Appeal, dated 19th May, 1886, upon the ground that not having previously received Judicial sanction the Regulation could have no force or validity as against foreigners.\* In other words, the Court of Appeal disputes, or, rather, denies to the Egyptian Government the right of making Regulations for good order and security affecting foreigners, without first obtaining its assent and authorisation. Consequently, in matters of police, sanitation, &c., the Egyptian Government finds itself under the tutelage of the Courts. It is no longer, as in other countries, the Executive, but the Judicial authority which issues Regulations. Such a policy, if permitted to continue, cannot but fatally weaken and discredit the Executive in the eyes alike of natives and foreigners.

Whilst all must admit that the International Tribunals are an amelioration of the former state of things Judicial, there can be no question that they have taken advantage of defects in the ill-considered Codes to extend their jurisdiction to the detriment of the Legislative and Administrative functions of the State. In these circumstances, it would seem that a better organisation of the Courts, and a revision of the imperfect Laws now subsisting would confine within their own proper domain the powers which they have wielded at the expense of the prestige of the Egyptian Government. One of the first duties, therefore, in setting about the work of Reform should be to take such measures as shall restrict the jurisdiction of the Tribunals within its proper limits. Another should be to curb their political tendencies, and disabuse the Judicial mind of a notion which has in some cases taken possession of it, viz., that a Judge is to a great extent, in Egypt, the representative of the country by whom he is nominated.

Further legislation is needed to create a standing Legislative body empowered to enact alterations and additions to the Codes. Under present conditions, Sir Henry Wolff tells us, the consent of the Powers is required before any change can be made.\* In order to introduce uniformity in Laws and Procedure, one General Code should be substituted for the two which at present obtain. By favour of the then Egyptian Minister for Foreign Affairs, the writer of this Paper received direct from his Department copies of these two works, and having examined them, he is in a position to bear out the strictures passed upon them by M. Charmes, and by the "Ancien Juge Mixte," whose able work *L'Egypte et l'Europe* we have already had occasion to mention. One of the most flagrant anomalies is that whilst in the International Courts a Jury (composed exclusively of Europeans) tries cases of a

\* *Parliamentary Papers. Egypt. No. 5 (1887), p. 10.*



criminal nature, this most salutary of Institutions is denied to persons accused of crime before the Native Tribunals.

During Mr. Justice West's brief stay in Egypt as Public Prosecutor in the Native Courts, he was so struck by the short-coming of the Criminal Law that he voluntarily undertook the laborious task of preparing a Criminal Code, which, we learn from an answer given in Parliament by Sir James Fergusson to Sir George Campbell, was referred to a Commission.\* The Commission has no doubt by this time finished its labours, but until the assent of the Powers is given to extend the jurisdiction of the International Tribunals, it does not seem to be intended to bring the revised Criminal Code into force.†

We are strongly of opinion that the International Tribunals should no longer be treated as exotics by restricting their term of existence to another quinquennial period. There is no more efficacious mode of hindering reform, destroying the confidence of the weak, and maintaining the obstruction of the strong, than to fix a term at which everything we are trying to establish shall again be liable to be upset and undone. Modifications in the *personnel* may from time to time be expedient, in the direction of lessening the number of Europeans as the native Judges became habituated to European methods of conducting Judicial business, but such internal changes can assuredly be effected without eliminating the element of permanence in the Courts themselves. The opportunity ought therefore to be taken advantage of when the quinquennial period elapses, both of reducing the present excessive number of Judges by a fusion of the two sets of Courts (maintaining for the present a preponderance of Europeans), and of placing the Judicial authority exclusively in the hands of

\* *Times*, August 26th, 1887.

† *Parliamentary Papers. Egypt.* No. 5 (1887), p. 9.

functionaries removed by permanence of tenure from subjection to either governmental or popular pressure.

Another and rather delicate matter remains to be dealt with, and that is to direct attention to the extremely small proportion of Englishmen employed in the administration of Justice in Egypt. Englishmen believe, and we think rightly believe, that their own system of Law is in most respects superior to that which obtains in other European countries, and they point with justifiable pride to the impartiality, uprightness, humanity, and independence of those who administer that system. It has been asserted by English experts in Egypt that the Continental system of Law is cumbrous, complicated, costly, and less suited to the needs of that people than a modification of our own would be. Why, then, should we not attempt to induce the Powers both to allow our system to be tried, and also to give Egypt an opportunity of reaping the advantages of having it administered by English hands?\*

At present not a single Englishman is employed in the Department of Justice. The Central Administration is entirely in Native hands. A very limited number of Belgian and Dutch Jurists are employed as Judges. The Legal Advisers of the Egyptian Government, who have no executive functions, are mostly French and Italian.† In the year 1882, there were, out of 203 Europeans attached to the International Courts, only nine Englishmen employed; whilst in the year 1886 (the date of the last return), out of 264 Europeans, the number of English amounted to no more than 16.‡

[\* The English system, if introduced into Egypt, would undoubtedly require modification, and the direction which such modification might take seems already suggested, viz., the Anglo-Indian. But English Statute Law could have no force in Egypt, nor, it is submitted, could Case Law, nor yet the Common Law. The *residuum* would probably scarcely be considered a fair sole representative of English Law.—ED.]

† *Parliamentary Papers. Egypt.* No. 6 (1887), p. 5.

‡ *Ibid.*, p. 21.

Well may M. Privat exultingly assert that "France has, down to the present time, lost none of her preponderance with regard to the administration of Justice; has even seen her representation [—the word seems significant—] increase upon the Bench of the Mixed Courts, retains in their integrity her laws and procedure, and may behold with satisfaction her tongue becoming almost exclusively the language of the Courts."

If, then, any real progress in the path of Reform is to be made, if a bold and serious scheme of reconstruction is in contemplation, its execution and supervision must not be left in hands which we know by previous experience would turn it not to the profit of the country but to the advancement of their own political aims.

It may not be prudent to increase European interposition to any great extent, or even at all; but assuredly, out of the 280 Europeans holding Judicial posts, the proportion of British subjects is ridiculously small. A *laissez faire* policy may, under certain circumstances be expedient, but in this case it will never do to accept Sir Evelyn Baring's advice to "let the Egyptian Ministers find out the defects in the present system themselves and remedy them in their own way." \* Far wiser would it be to adopt, and, by vigorous and comprehensive measures, give practical effect to the opinion he expresses further on in the same Despatch, "that the creation of Tribunals which will inspire confidence in the country is, as a preliminary step towards the departure of the British troops, scarcely less important than the formation of an army on which reliance may be placed."

\* *Parliamentary Papers. Egypt.* No. 6 (1887), p. 5. Those of them who can boast of a European education have derived their acquaintance with Judicial institutions almost exclusively from France, and they are, therefore, naturally reluctant to give a trial to a system like our own, with which they are wholly unacquainted.

The reconstruction of the International Tribunals, and the administration of a better system of Law and Procedure, whilst affording the strongest protection to the rights and interests of Europeans, will assure to Egypt guarantees for the maintenance of internal order, and thus will satisfy one of the prime conditions for the due discharge of her International obligations.

B. L. MOSELY.

[\*\* Since the above was written, the news has reached us of the dismissal from office of Nubar Pasha, to whom all well-wishers of Egypt are so greatly indebted for his perseverance in upholding the cause of Judicial Reform, embodied in the International Courts. We have been told, it might seem unnecessarily, that the dismissal was not due to any pressure on the part of the Sultan's representative, Mukhtar Pasha. It is perhaps a little curious how often what is officially denied eventually turns out to be the actual fact. We do not assert that it will so turn out in Nubar Pasha's case, but we cannot altogether lose sight of the possibility. In any case, we can only regret that the Khedive and Egypt should have been thus deprived, at a critical period,—though, it may be hoped, only for a short time,—of the services of so distinguished a Statesman, a member of one of the ablest and most enduring of Eastern nationalities,—the Armenian,—which, in such different parts of the world, and under circumstances of such exceptional difficulty has given to Russia a Loris Melikoff, and to Egypt a Nubar.—ED.]

### III.—THE PRESENT POSITION OF REFORM IN THE LEGAL PROFESSION.

**J**UDGING from the storm of controversy which the Solicitor-General's suggestions have awakened, it would seem that Medicine is not destined long to remain the only department of learning in which differences of opinion are to be regarded as proverbial. His famous Birmingham speech has become a genuine apple of discord, and from the Lord Chancellor down to the veriest neophyte in the practice of the law we find the disputants ranging themselves in opposing camps. No sooner had Sir Edward Clarke's utterances been conveyed to the world through the medium of the daily Press than Lord Halsbury availed himself of the somewhat incongruous occasion of a City Company's dinner to make the supererogatory announcement that the views of his "most excellent and distinguished" friend were not shared by Her Majesty's present Administration. The Lord Chancellor's statement seems to us to have been a work of supererogation for two reasons. In the first place Sir Edward Clarke had, in language which ought to have been incapable of misconstruction, disclaimed any intention of expressing opinions for which he was not himself wholly or solely responsible, and in the next place because it had never occurred to anyone to charge the Government, at all events in a matter of this kind, with Revolutionary tendencies. Not to be behindhand, the Attorney-General also quickly followed suit, we believe on more than one occasion of a similar character, condemning in emphatic terms the suggestions which, as President of a Provincial Debating Society of Law Students, his colleague had ventured to put forward. The warfare has been principally carried on at meetings of the Bar Committee, the Incorporated Law Society, and other Law Societies,

and in the journals exclusively devoted to Legal matters. But the discussion has not been wholly confined to the organs representing class interests, for the general Press has found space in its columns for the expression of views lay and legal, and from the articles and correspondence it would appear that there is a strong current of opinion setting in the direction aimed at by the Solicitor-General.

Perhaps the most remarkable impetus which the movement has yet received comes from the very quarter whence it was least of all to be expected. It almost looks like the irony of Fate that the Attorney-General, after having strongly expressed his dissent from the project, should have been induced to make an announcement such as can hardly fail to hasten the result which he has himself so earnestly deprecated. We refer, of course, to the letter which Sir Richard Webster addressed to Mr. Yerburch, in answer to an enquiry "as to the rule of etiquette which regulates the intercourse of the profession with the general public."\* The principle therein enunciated, if courageously acted upon, will, we believe, go far to demolish that Chinese wall of legal etiquette, in which a breach has been so valiantly attempted by the Attorney-General's daring brother in the Leadership of the Bar.

As regards contentious business, whether before or after litigation has commenced, the Attorney-General holds that Counsel ought not to act without the intervention of a Solicitor. But as regards *non*-contentious business the case is different, and, speaking generally, there is, in his opinion, "no objection to a barrister seeing and advising a lay client without the intervention of a Solicitor upon all points relating to the lay client's own personal conduct or guidance, or the management or disposition of his own affairs or transactions." Here we have at last an authoritative statement upon a question which has of recent years

\* *The Times*, June 29th, 1888.

been frequently mooted, but never clearly decided. The Attorney-General bases his ruling upon "the practice and tradition of the profession, which have been recognised from time immemorial." Of course the Attorney-General, if anyone, ought to know what this practice and tradition are, and the Bar can have no cause to complain if, in the present circumstances, he should have followed what he believed them to be. But to the ordinary member of the Bar, whatever may have been the tradition, the practice was extremely doubtful. As was recently pointed out in this *Review*,\* eminent lawyers of the last century constantly saw their clients in their chambers without the introduction of an intermediary, whereas, in more recent times, that practice, with exceptions presently to be noticed, has been discountenanced, and, we believe, both as respects non-contentious and contentious business, wholly discontinued. There seems to have remained some faint glimmering of an impression that in cases where litigation was not pending or in contemplation, a Barrister might still open his door to a member of the public without committing an unpardonable sin against the rules of perhaps the most rigid of Western castes. In 1884, the then Attorney-General, Sir Henry James, was invited to pronounce his judgment as to the correctness of such a view, but he appears to have been anxious to escape from so tremendous a responsibility, and to have endeavoured to shift it on to the shoulders of the newly-fledged Bar Committee. That body, however, seems to have been equally desirous of avoiding a declaration, and so the matter was shelved until the present time.

Now that the Attorney-General's decision has been published, it remains to be seen what will be its effect on the relations existing between the two branches of the Legal Profession; but we cannot help thinking that Sir

\* *Law Magazine and Review*, No. CCLXVII., for February, 1888, pp. 194—195.

Richard Webster's interpretation of the practice and tradition of the Bar would have been less open to cavil had he in the first place expressed with greater precision the distinction to be drawn between contentious and non-contentious business, and, in the second place, refrained from entering into the reasons by which he had been guided in coming to such a determination. To have followed the very sage counsel of an illustrious Judge, long since deceased, and to have resisted the temptation of seeking to support his ruling by discussing its wisdom, would undoubtedly have minimised opportunities for adverse criticism. As it is, there will be many who will find it well-nigh impossible to reconcile the train of reasoning with their every-day experience.

What is the justification put forward by the Attorney-General for the obligatory intervention of a Solicitor in contentious business? "One very grave reason for this rule," says Sir Richard Webster, "is obvious. In contentious business, which frequently affects the rights of other persons, it is most important that the facts should be as far as possible accurately ascertained before advice is given. For this purpose, as a barrister cannot himself make proper inquiry as to the actual facts, it is essential that he should be able to rely on the responsibility of a Solicitor as to the statement of facts put before him." It is evident that such an argument pre-supposes a very high standard of virtue and efficiency among Solicitors. It assumes that "the facts" *are* "as far as possible accurately ascertained before advice is given;" that "proper inquiry as to the actual facts" is made, and that "the barrister" is "able to rely on the responsibility of a Solicitor as to the statement of facts put before him." Unhappily, however, this lofty ideal is belied by the state of things actually existing. It is matter of common knowledge, at least amongst the Junior Bar, that the facts are not always



accurately ascertained, nor are they invariably fully disclosed to Counsel before advice is given; and, as to the responsibility, that is not unfrequently divided between a Solicitor, who knows nothing of the case, his clerk, who knows so much that he thinks it wise to keep silence about its ugly features, and the Counsel retained, whose instructions may be imperfect, erroneous, and misleading. Besides, the Attorney-General has left out of account that large class of contentious business known as County Prosecutions, Dock Defences, and Licensing Applications and Oppositions, in which the intervention of a Solicitor has never been prescribed. If there be any logic in his contention, it may be asked, on what principle are these classes of business to be excluded?

But a much more formidable problem presents itself when we endeavour by the light of the Attorney-General's reasoning to ascertain for ourselves the boundaries which a barrister may not overpass without calling a Solicitor to his aid. The authority, whose opinion in matters of Bar etiquette is supreme and final, informs us that "there is no objection to his seeing and advising a lay client without the intervention of a Solicitor, upon points relating to the lay client's own personal conduct or guidance, or the management or disposition of his own affairs or transactions." Such vague language might well, according to the varying views which prevail, be held to include either a large or a small area of functions. Liberally construed, the drafting, settling, and construction of Wills, Settlements, and Conveyances generally, as well as ordinary business contracts, would come within its purview; but whenever, in the course of the business in hand, the necessity for correspondence or interviews with other parties should arise, then, applying the Attorney-General's test as to the "inquiries" which have to be made, a Solicitor's services would seem to be absolutely *de rigueur*.

Instances will, however, happen in which the Attorney-General's injunction as to contentious business may involve the individual Barrister in no small doubt and difficulty, in surmounting which he will derive but little practical assistance from the Attorney-General's warning that "great care should be exercised by members of the Bar who do advise lay clients, to abstain from advising upon matters which are in effect of a contentious character."

Let us take as an illustration a case which is likely to be of most frequent occurrence. Suppose that a lay client calls at a Barrister's Chambers to consult him as to whether or not a contract has been broken. In such case, possibly, the Barrister's clerk would in the first instance intimate to the lay client that Mr. So-and-So's fee for Conference was—but no, that would be transgressing another rule of etiquette. The Barrister's clerk would have to undertake the uncongenial task of first of all enquiring into the exact nature of the matters about which it was desired to consult Counsel. A mass of irrelevant and confused details would be poured into his ear. Incompetent to sift the wheat from the chaff, he would in all probability convey to his employer inaccurately, and in a still less coherent condition, such statements as his untrained intellect could manage to retain. And upon *data* thus communicated, the Barrister would have to make up his mind whether or not he ought to grant an interview. Assuming, as might happen in nine cases out of ten, that the Barrister required further enlightenment, he would necessarily have to see the client. Once face to face, he would have to hear the whole of the history over again, and he would then have to address to his visitor, wearied, and perhaps irritated almost beyond endurance, a series of interrogatories with the object of ascertaining whether litigation on the one side or the other appeared to be in contemplation. Indeed, for

aught we know, the Attorney-General's prohibition might lead many a nervous and strictly conscientious member of the Bar to feel it incumbent upon him, before advising, to endeavour to extort an assurance that, whichever way his opinion might go, no action should be brought or defended in accordance with the view of the Law which he was prepared to express. But now comes the most perplexing part of the proceedings. Let us assume that, after this questioning, which has been undertaken at the expenditure of a considerable amount of time, the Barrister should come to the conclusion that the matter was in effect "contentious." To what means is he to resort to obtain compensation for the labour and anxiety involved in this troublesome investigation? The Attorney-General tells him that he may not, if a junior, accept less than £1 3s. 6d., or, if a leader, £2 4s. 6d.; but by what process is he to extract from the man whom he has, no doubt unwillingly, harrassed and annoyed, and finally declined to assist, even the minimum *honorarium*? Upon this very important question the Attorney-General has left the Profession in utter darkness. Are we to assume that he could not enlighten us?

As to what is or is not contentious business, the Attorney-General finds, "it is scarcely possible to state the rule in a way which will be absolutely accurate under all circumstances." That is no doubt a difficulty inherent in the application of all general propositions, but surely, by means of enumeration, Sir Richard Webster might have found himself able to draw the dividing-line with somewhat greater clearness and precision. To allow matters to drift on in the uncertainty into which they have now been thrown, if it does not actually favour abuses, must inevitably, we fear, fan the flame of jealousy between the two branches of the Profession, manifestations of which are, unhappily, of only too frequent occurrence. Should the ruling of the

Attorney-General, in its present form, be generally accepted and acted upon, the Barrister, though hampered and embarrassed by the limitations it imposes, will nevertheless obtain an increase of employment at the expense of the Solicitor; whilst, on the other hand, the Solicitor, deprived of a portion of the work which he deemed to belong to his own particular domain, will naturally see in this new departure a strong incentive for usurping the functions which have hitherto been reserved to those practising in the higher branch of the Profession. The result of this will be acrimonious competition, rivalry, and strife, discreditable to all parties concerned, and which may lead to Parliamentary intervention in the shape of a measure whose drastic and hastily-conceived provisions would be unpalatable alike to the supporters and opponents of what is known as "Fusion," and to all the friends of Reform in the Legal Profession.

[\*\* In publishing a second Article from the valued contributor who shewed cause in the pages of this *Review* for what appeared to him, as to some in high places of the Profession, to be necessary, or at the least very desirable, Reforms, we remain true to the attitude which we then took up of giving expression to views which we did not necessarily share on all points. And we the more readily give insertion to the present Article, in that it points to certain difficulties which will have to be surmounted, and certain dangers which must be avoided, before any sound and well-considered measure of Reform can be carried through to a successful issue. If there be a cause for Reform, it is clearly both a right and a duty of this *Review* to sound a warning note against the evils of hasty legislation, else the last state of the Legal Profession in this country might be worse than the first.—ED.]

#### IV.—NEW PHASES OF TRAFALGAR SQUARE.

SINCE an Article on this subject appeared in the pages of this *Review*,\* signs have, happily, not been wanting to indicate that the self-chosen champions of popular rights are getting weary of continually placing themselves and their followers in opposition to the Authorities. Those who profess to represent the cause of the people have introduced Bills into Parliament, and have asked for increased facilities for their discussion. They have also endeavoured to induce the Magistrates to state a case for the consideration of the High Court, which shall fully raise the question of the right of public meeting in Trafalgar Square, and, according to a statement made in the House of Commons on July 21st, the Magistrates have acceded to this application.† We may, therefore, reasonably hope that the unseemly conflicts, of which Trafalgar Square has been the scene, will before long be put an end to, and that a controversy which has resulted in such regrettable agitation is within measurable distance of settlement. Meanwhile, although, of course, we have no desire or intention to comment upon cases which are said to be *sub judice*, we may be permitted to point out, without exceeding any limits of propriety, that nothing, in spite of all that has been alleged to the contrary, has happened to alter in the smallest degree the Legal position of the question since the article above referred to was written. It is no doubt a fact that an attempt has been made to obtain from the Judges a legally binding decision upon the matter. That attempt, we cannot but think, was unfortunate, though not in one of its results, for we should have been sorry to see the slightest

\* *Law Magazine and Review*, No. CCLXVII., for February, 1888, p. 260.

† *Times*, July 21st, 1888.

encouragement given to those who, without a shadow of pretext, accuse valued public servants of grave criminal misconduct, but from the unsatisfactory method in which this admittedly difficult question was raised and argued. At the bidding, we are told, of 50,000 delegates, Mr. E. Dillon Lewis, a Solicitor, took upon himself the serious responsibility of making an application in person to the Queen's Bench Division of the High Court of Justice to grant a rule *nisi* for a Mandamus to compel a Metropolitan Police Magistrate to issue a summons against the First Commissioner of Police and the Home Secretary for a variety of heinous offences. They were charged with “(1) conspiring by unlawful violence and other unlawful means to prevent divers of her Majesty's subjects from exercising their constitutional rights; (2) conspiring to endanger the public safety and peace, and to injure, annoy, and disturb the public in the enjoyment of their civil rights; (3) a nuisance at common law, stopping the processions, preventing by force the lawful use of the thoroughfare, or enjoyment of public rights and privileges, causing inconvenience to Her Majesty's subjects in reference to their personal safety; (4) conspiracy to inflict grievous bodily harm by using violence in excess of what the occasion lawfully required.”\* Upon an application such as this it would appear to have been the practice to allow a prosecutor to make the motion in person, notwithstanding the well-known rule that in cases of Mandamus, for which this proceeding is a substitute, the application can only be made by Counsel. Accordingly, Mr. Dillon Lewis, having declared himself upon affidavit to be the prosecutor, and not to be acting in any way as Solicitor for anyone else, was allowed to be heard. From the account, however, that the learned Judges have given of his conduct of the case, the 50,000

\* *Times*, June 30th, 1888. *Times Law Reports*, IV., 649-651.

delegates whom Mr. Lewis professed to represent might well feel dismayed that their choice should not have fallen upon one somewhat better versed in the arts of forensic argument. "Our experience in this case," say the Judges, "makes us almost doubt the wisdom of the relaxation in the old rule, as our time was taken up for two-and-a-half hours by arguments founded largely on legal solecisms of the wildest kind—as, for instance, on the assertion that the owner of land could make an effectual dedication of it to the public for any lawful object or use; that fairs and markets owe their origin to dedication; that a resolution of one House of Parliament was a declaration of law as binding as the decision of one of the Superior Courts, and that the law under which the Judges held their appointments was *quamdiu se bene gesserint*, instead of *durante bene placito*—a cardinal provision of the Act of Settlement, 12 and 13 William III., chapter 2,—rests upon no more solid foundation than a resolution of the House of Commons. From arguments based upon such notions of law and history the Court can derive no assistance, while they necessarily involve a great waste of time." Auspices such as these, it will be readily perceived, were not very favourable to the success of the application, and, in the end, it was dismissed upon the ground that the Magistrate had *bonâ fide* exercised his discretion in refusing the summonses, and that the Queen's Bench Division was not a Court of Appeal from the Justices, and had no jurisdiction to compel them to exercise their judgment in a particular manner. This determination was supported by the authorities cited in the judgment, and the refusal to assume jurisdiction to direct a Magistrate to alter his decision in a matter within his jurisdiction was clearly and unmistakeably the sole point upon which that judgment was founded. Incidentally, no doubt, the Judges did refer to the question which had been so prominently put forward by the applicant

as to the Right of Public Meeting in the Square, but they distinctly avowed, to use their own language, that "a decision by us of the other questions raised by Mr. Lewis is beyond our competence." Hence we think we are justified in saying that, while the opinions of these learned Judges are entitled to the highest respect, the expression of them in this case is, for the reason which they themselves have given, simply an *obiter dictum*, and can have no binding effect upon any one of Her Majesty's lieges.

Premising this, let us endeavour, if we can, to discover the process by which Wills and Grantham, JJ., arrived at a conclusion unfavourable to the contention upheld in this *Review*. Their first care seems to have been to disengage and separate as far as possible the question of the abstract Right of Public Meeting from the Right of Meeting in Trafalgar Square. As regards the general principle, that, in language savouring almost of magnanimity, they appear fully to recognise. "It is a right," they say, "which has long passed out of the region of discussion or doubt." So far, so good. But it would have been more satisfactory, we submit, had they, in enunciating this principle, at once made quite clear the meaning which they attributed to the terms employed. Are we to infer that by the Right of Public Meeting is meant the right of the Public to meet in public places, or are we to understand the concession of the Judges to amount to no more than this, that the Public have a right to meet in those places only where they have previously obtained the consent of the owner of the soil? At the first blush, the *dictum* of the Judges might well be thought to bear the wider interpretation, but we fear, from observations which occur in a subsequent portion of their Judgment, that the narrower construction only must have been intended. Whichever was the view they had in their minds, the case of Trafalgar Square, the Judges tell us, raises considerations wholly distinct, because "it is



completely regulated by Acts of Parliament, and whatever rights exist must be found in the Statutes if at all," and then they add, "the right of public meeting is not among them." We venture, with deference, to dissent from that view. Carried to its logical conclusion, it would entitle the Commissioners of Works to completely exclude the Public from the Square. Now no one has hitherto questioned the right of passage across the Square, and yet, if such a canon of construction is to hold good, the right to traverse the Square, not being one in terms conferred or recognised by statute, could not be legally maintained. For our part we must confess our inability to appreciate the cogency of this argument. As well might it be said that because the Judicature and other Acts constitute a complete regulation of the Law Courts, the right of the public to attend them—a right, be it observed, which depends upon no statutory enactment—has no legal foundation. We submit that the converse proposition is the correct one, viz., that a Common Law right, such as is the right of the Public to meet in a public place, cannot be abridged or extinguished save by express statutory enactment, and that, as in the statutes creating Trafalgar Square no restriction or abrogation whatsoever is to be found, the right exists in its full force and effect. Moreover, it could be shewn, we think, that our contention might be supported on the very grounds which the learned Judges have put forward as their reason for refusing to recognise the right. Turning to the Statutes 53 Geo. III., c. 121, and 7 Geo. IV., c. 77, by virtue of which the site for Trafalgar Square was cleared, what do we find? The words "open square" in the first of these Acts, and "open place or square" in the second, are the expressions employed to describe its character. Now, is there anything in the Trafalgar Square Act (7 & 8 Vict., c. 60), or any other statute, before or since, changing, or in any way limiting, that character? Not a

syllable. Might it not, then, with some shew of reason be maintained that the Statutes themselves "confer or recognise" the right which has been asserted? But then, it is said by the learned Judges that the claim to meet in Trafalgar Square is "in other words a suggestion of a right on the part of as many of Her Majesty's subjects as may be so disposed to occupy Trafalgar Square whenever and so often as they may wish for a public meeting, or, possibly, for more than one public meeting to be held by persons of conflicting views and sympathies (for the right, if it exists, must be common to every member of the public)." Our answer to this is that we can hardly imagine so extravagant a pretension being put forward by any reasonable person. It is not claimed that any number of people are entitled to occupy Trafalgar Square whenever they choose, even though they assembled in such numbers as to interfere with the right of passage of persons traversing the Square. Nor is it claimed that an unlimited number of public meetings might be held there at one and the same time by persons holding conflicting views and sympathies, even though the Authorities might have reasonable ground for apprehending that such meetings would lead to a breach of the Peace. What is claimed, is that meetings conducted in a peaceable and orderly manner, so as not to interfere with the use of the Square by persons traversing it, cannot lawfully be prohibited.

One point remains to be noticed, which was not dealt with in the Judgment above referred to. It was pointed out in the Article before mentioned that by virtue of the Trafalgar Square Act of 1844, the Commissioners of Works, though they are not entitled to exclude the Public from the Square, have under their jurisdiction its "care, control, management and regulation." They have therefore the power to make regulations for its use and enjoyment by the Public, provided that such regulations do

not amount to prevention of free ingress or egress. During the forty-four years which have elapsed since the passing of that Act they have not, however, deemed it necessary to exercise those powers, but in the absence of such regulations the Metropolitan Police authorities, in November last, for the first time took upon themselves to issue directions prohibiting, for an indefinite period, any meetings whatever in the Square. They purport, according to their latest proclamation, to be acting under powers vested in them by 2 & 3 Vict., c. 47 (which is incorporated in the Trafalgar Square Act of 1844), sect. 52 of which enables the Commissioners of Police to make regulations and give directions for the keeping of order and the preventing of obstruction in any case when the streets or thoroughfares may be thronged or may be liable to be obstructed. But neither does that statute nor any other, we venture to submit, empower them to exclude the Public for all time from assembling in Trafalgar Square.

## V.—FOREIGN MARITIME LAWS: II. ITALY.

### MERCANTILE MARINE CODE.

#### CHAPTER XIII.

##### *Of Fishing.*

ART. 139. Maritime fishing is divided into limited and unlimited fishing.

“Limited” fishing is that which is carried on in the Territorial waters of the Realm, within the boundaries of the fishing district to which the boat which is carrying it on belongs; and includes the interiors of harbours, canals, and lagoons, in which the water is salt, and which communicate with the sea. The division of the sea-shores of the Realm into different Fishery districts is carried out by a Royal Decree on the advice of the Minister of Marine.

“ Unlimited ” fishing is that which is carried on abroad, or within Territorial waters outside the boundaries of the district to which the (fishing) boat belongs.

The Mer. Ship. Act, 1854, § 109, and Mer. Ship. Act Amendment Act, 1862 § 13, distinguish, for certain purposes, between ships and sea-going vessels employed exclusively in fishing on the coasts of the United Kingdom, and those whose operations are not so limited; and by the Mer. Ship. (Fishing-boats) Act, 1883, § 53, British vessels, not belonging to Canada or Newfoundland, employed in Whale, Seal, Walrus, or Newfoundland Cod Fisheries are deemed to be foreign-going ships, and treated as such and not as fishing-boats. By the Fishery Convention of 1882, relating to the North Sea, between Great Britain, Germany, Belgium, Denmark, and Holland (see Fisheries Act, 1883, § 28), as by that, not yet ratified, between Great Britain and the United States relating to the North American Fisheries, the limit of exclusive fishing, which is an apparent definition of the law of Territorial waters, is fixed at three miles from low water mark, and in the case of bays, three miles from a line drawn across the bay at the place nearest the sea where such line does not exceed 10 miles in length.

140. Fishing in the sea belonging to the Realm is under the jurisdiction of the Maritime administration, so far as concerns the police regulations for the sea and navigation, and to the requirements of the Fishery Laws.

Cf. Sea Fisheries Act, 1883, §§ 4, 5, 7.

141. The setting-up of nets for tunny or mullet in the Territorial waters of the Realm, as also the setting-up in the sea or on the shore of works adapted for the nurture and cultivation of fish, *testacea*, *crustacea*, shell-fish, corals, and sponges, must not be carried out except under a concession from the Minister of Marine, saving rights already acquired as to such fish.

Cf. 3 Jac., c. 12; Crown Lands Act, 1885 (48 & 49 Vict., c. 79), § 3; Sea Fisheries Act, 1868 (31 & 32 Vict., c. 45).

142. The said concessions will be made at an annual rent, and under any other conditions which may be determined by the deeds relating to the matter.

143. Fishing for fish in the sea belonging to the Realm is exempt from any contribution whatever for the vessels of national fishermen, and for foreigners admitted to the status of native fishermen in virtue of Fishery Treaties.

Vessels of foreign fishermen which are not assimilated to native craft by special treaties will pay a sum to be fixed by Royal decree.

By the Sea Fisheries Act, 1883, Fishing in the sea within the Territorial limits of the Realm is forbidden to foreigners, but is not necessarily open to all subjects, certain fisheries below low water mark being granted to individuals or corporations, to the exclusion of others ; but such grants are, as a rule, confined to spaces *inter fauces* and not on the open sea. See *De Jure Maris*, by Chief Justice Hale, chaps. IV. & V. Edward I, indeed, seems to have strained this prerogative so far as to grant liberty to the Hollanders to fish “*in mare nostro prope Yernemuth* (Yarmouth).” Possibly, however, those “Hollanders” may not be Dutchmen, who, as such, did not exist in the reign of Edward I., but the inhabitants of that Holland which constitutes the south part of Lincolnshire, bordering on the Wash.

[To this ingenious suggestion of the author of the present valuable series of articles, it may be objected that the subjects of the Counts of Holland must have been entitled to be called “Hollanders,” long *ante* Edward I.—Ed.]

144. Boats intended for “limited” fishing will be provided with a license by the Local Maritime Authority, renewable from year to year, which will be granted to the owner and will set out the name of the fisherman who takes charge of the boat. Those which are intended for “unlimited” fishing will be provided with the regular ship’s papers required for navigation with the exceptions mentioned in Art. 39.

See note to Art. 139, *ante*.

145. Fishing-boats of foreign nationality which are admitted to fish in the waters of the Realm, and are furnished with the license required by the preceding Art. 144, will be subject to the same regulations in all respects as those laid down for natives.

146. Boats which are only intended for the local service of fixed tunny and mullet nets are exempt from the obligation of having ship’s papers and the license required by Art. 144, and are only subject to the regulations of the Marine police.

That is, boats employed to get fish out of the fixed nets or weirs, and carry them ashore, are not, in the proper sense, fishing-boats at all.

147. Any person who desires to take charge of a vessel for limited fishing must—

- (a.) Be registered as a seafaring man in the first or second category :
- (b.) Be of the full age of 21 years :
- (c.) Have 12 months' experience in fishing or in the capacity of a sailor.

See Articles 18 and 19, *ante*.

To get a certificate as "skipper" of a fishing-boat, a man must, in Great Britain, besides satisfying the examiners of the Board of Trade of his fitness, have had a certificate as "second hand" for 12 months.—§ 37 Mer. Ship. (Fishing Boats) Act, 1883 (46 & 47 Vict., c. 41).

148. To command vessels for "unlimited" fishing, it is necessary—

- (a.) To be of the full age of 21 years :
- (b.) To be inscribed on the register of seafaring men of the first category :
- (c.) To have two years' experience of "unlimited" fishing, or of service on board national (Italian) vessels :
- (d.) To give proof of capacity in the manner which may be required by the regulations.

See note to Art. 139, *ante*.

149. For the fisheries beyond the Straits of Gibraltar, the Suez Canal, and the Bosphorus, the person in charge of the vessel must be, at least, of the rank of master or captain, according to the seas in which the fishing is carried out, following the limitations prescribed by this Code.

See note to Art. 139, *ante*.

## CHAPTER XIV.

### *Seamen's Deposit Banks.*

150. In chief towns of a Maritime district, to be defined by the regulations, a Bank is established under the name of "Seamen's Deposit Bank" (*cassa dei depositi della gente di mare*), which is managed by the respective Port Captains, and held by the treasurers or other accountants of the State.

151. This Bank is intended to receive provisionally—

- (1.) Money and valuables belonging to the heirs of seamen who have died at sea or in foreign countries :
- (2.) The proceeds of salvage of ships which have been wrecked on the shores of the Realm or abroad :
- (3.) The proceeds of goods found on the beach or recovered at sea :
- (4.) Money lodged as security for dues or repayments to the public Treasury, and in respect of any other matter which may be in dispute, whether (the money is lodged) in favour of the Treasury or of seamen.

In Great Britain these ends are met as follows:—

(1.) Goes in the first instance to the Board of Trade; and, if not claimed within six years, to the Consolidated Fund. Mer. Ship. Act, 1854, §§ 194—202 ; Mer. Ship. Act, 1842, § 21; (2. & 3.), after a year, are paid over to the Consolidated Fund or to grantee of the Crown. Mer. Ship. Act, 1854, § 475 ; Mer. Ship. Act, 1862, § 53 ; (4.) In case of dispute as to wages or salvage, money can be paid into Court to abide the event.

152. The conditions under which the said moneys will be paid into the Deposit Bank and advanced will be laid down in the regulations.

153. The form for the accounts of the said Bank will be determined by regulations.

## CHAPTER XV.

### *General Provisions.*

154. All persons inscribed in the (seamen's) lists and registered must obey the chief Port officers, Consular officials, and officers commanding ships-of-war belonging to the (Italian) State which they fall in with on the high seas, or in foreign countries where there is no resident Consular officer ; and are bound to carry out these orders, as far as possible, for the good of their compatriots, the honour of the flag, and the benefit of the Maritime Service.

They are further bound to present themselves at the office

of the above-named authority, on being merely asked to do so.

The only analogous provisions in English law are the Acts regulating the pressing of seamen and others for the service of the Crown.

155. Should it happen that money is needed to provide for sending home or assisting mariners who are shipwrecked or otherwise deprived of their ship, the advance will be made in manner determined by the regulations.

Cf. Mer. Ship. Act, 1854, §§ 211-213; Mer. Ship. Act, 1855, § 16; Mer. Ship. Act, 1862, § 22.

156. Provision will be made in a special form established by Royal decree, for the exchange of existing licenses as captain and skipper for those prescribed by this Code, as well as for granting licenses to naval architects of provinces of the Realm in which formerly no licenses were necessary for their industry. Naval architects to whom this Article refers must shew a *bonâ fide* and full exercise of their industry antecedent to the publication of this Code.

Masters and skippers, and seamen qualified (to command) in small craft or fishing, who, prior to 1st January, 1865, had authority to extend their voyages beyond the limits assigned to their respective ranks, or who have commanded ships of greater burthen than allowed to them respectively by Arts. 59 and 60, will continue to enjoy the like facilities.

A similar provision to this with regard to certificates to officers was made on the passing of the Mer. Ship. Act, 1854, by § 135, to engineers, by the Mer. Ship. Act, 1862, by § 9; and to skippers and 2nd hands of fishing-boats, by Mer. Ship. (Fishing-boats) Act, 1883, by § 40, by granting to all persons who, before those Acts, had served as officer, engineer, skipper, or 2nd hand, certificates of service in lieu of requiring them to obtain certificates of competency by examination.

### TITLE III.

#### *Of the Service of Ports and Sea-Coasts.*

#### CHAPTER I.

##### *Of the Sea-Shore and Sea-Coast.*

157. Sea-coast and sea-shore includes ports, docks, cuts and creeks, coves and roadsteads which are subject to the



Maritime administration in all matters concerning their use and Maritime police.

Portions of the shore, and other places belonging to Sovereign domain, which are declared by the Maritime administration to be considered as useless to the public, may be transferred from being the property of the public domain to the private property of the State.

This means, as the subsequent Arts. shew, that a concession of the sea-shore (public or national property) could not be granted to an individual, but if declared by the proper authority not to be needed for public use, such shore may be granted as though the private property of the State. The matter is somewhat analogous to the Crown rights in the sea-shore in England and the Crown property ceded to the State in return for the Civil List.

[Is there in the United Kingdom State property as distinguished from Crown property? Did the Crown cede more than the administration?—ED.]

158. Permanent concessions of the property belonging to the public domain mentioned in the preceding article must be authorised by law.

Temporary concessions of the above-mentioned property, and all matters relating to it, are granted by the Maritime administration. But it will take counsel with other administrations which have an interest in the matter, when it is intended to construct works of a permanent nature or of special importance on the space to be conceded.

Down to the first year of the reign of Queen Anne the Crown possessed, and in very many cases had exercised, the right of granting its property in the shores of the Realm to individuals, and such grants still hold good; but in that year a statute was passed prohibiting the alienation of Crown lands for the future (1 Anne, ch. 7, § 5), and therefore since then an Act of Parliament has been necessary for the erection of works on the sea-shore, and even then, the consent of the Board of Trade and the Lords of the Admiralty must be obtained. (Harbours, Docks, and Piers Clauses Act, 1847, § 121; Crown Lands Act, 1866, § 8; The Harbours Transfer Act, 1862.)

159. Any alteration in the harbours, sea-shore, or sea-coast is forbidden, unless express authority has been obtained. If the unauthorised alteration is completed, the Maritime administration will lay a complaint against the offender before the Judicial authorities for the proper penal

proceedings ; but, if the alteration is not yet complete, it will take similar proceedings, and, in addition, prohibit the continuation of the works, and require the offender to reinstate things in their original condition ; and will proceed officially, and at the expense of the said offender, if he fails to do so, to carry out whatever the Maritime interests require to be at once carried out.

This could be done in England either by Injunction against the continuance of the works or by indictment, if they in any way constituted a nuisance. •

160. It is prohibited to dig sand, stones, shingle, or to make any other excavation on the sea-shore or coast or within the precincts of ports beyond the places set apart for this purpose, except under a special permit from the Maritime authority.

The English law is very obscure on the right of a subject to take sand, &c., on the sea-shore. In Devon and Cornwall such a right undoubtedly exists, under 7 Jac. I., c. 18 ; but whether that Statute was declaratory of a pre-existing right or itself granted a right was argued at great length in *Bagott v. Orr*, 2 Bos. & Pull., 472, and not decided. If the former, then such a right would appear equally to exist in all Maritime countries ; if not, it must depend on some local custom different in different places. The right to take shingle, &c., from the shore in a port may, under 54 Geo. IV., c. 159, § 14, and 25 & 26 Vict., c. 69, § 16, be prohibited by order of the Board of Trade ; see *Nicholson v. Williams*, L.R. 6 Q.B. 632. But no private person, even if lord of the manor under a grant from the Crown, has a right to remove shingle, &c., from the shore so as to endanger the land inshore of it ; *A.-G. v. Tomline*, 12 Ch. D. 214, 14 Ch. D. 58. It must, however, be remembered that in English cases the disputes as to rights on the sea-shore refer almost always to the shore between high and low water mark, and therefore could not occur in Italy, on whose coasts there are practically no tides. The shore above high water mark in England is governed by precisely the same laws as land in the interior of the country.

161. Places specially set apart for the free extraction of sand and shingle will be shewn in special tables which will be published in every Commune of the Maritime department. In other places, not shewn in these tables, digging by a person not provided with a special permit from the authority is deemed to be forbidden. The table will be made up in the Port Office with concurrence of the engineers entrusted

with the service of harbours and shores ; it will be laid before the Town Council (*Giunta Municipale*) of the place, and approved by the Minister of Marine.

When it concerns a locality subject to a military servitude, or situated at a less distance than 65 metres from road works, it is deemed to concern the administration interested alone.

See note to previous Article ; it would appear that whatever may be the actual legal right to take sand in Great Britain, it is not likely to be interfered with unless its exercise is injurious to harbours, &c., when it would be forbidden by the Board of Trade, or to private property, when it is forbidden by the Common Law.

162. Permission to dig in places not set apart for such a purpose in accordance with the preceding Article, must be requested from the Captain of the Port, and if the digging is to be at a less distance than 65 metres from works on communal or private property, consent of the Municipal authority must be obtained, the persons interested being also consulted.

See notes to the two preceding Articles.

F. W. RAIKES.

## VI.—RATTIGAN'S JURISPRUDENCE.\*

OUR valued contributor, Dr. Rattigan, has made time in the rare intervals of rest from his various official duties, both as Vice-Chancellor of the University of his Indian home, and as a Judge of the Chief Courts of the Punjab, to write a book which was a *desideratum* for the Indian student, and which will be very acceptable to his Western brethren. The task was by no means light, and it might even have seemed at first sight an invidious one.

\* *Jurisprudence for Indian Students.* By W. H. RATTIGAN, LL.D. (Göttingen), Barrister-at-Law, Vice-Chancellor of the University of the Punjab. Lahore. Civil and Military Gazette Press. 1888.

For it might be said, have we not our Austin, our Maine, our Holland, and others *quos perscribere longum*? And are not they adequate guides for us through the mazes of Jurisprudence? Adequate, no doubt, they may be, in their several spheres, for the English thinking student, but it must be remembered that the Indian student, though English speaking, is probably but rarely English thinking, and none of the writers named, except Sir Henry Maine, was personally acquainted with Indian Methods of Law, and the doctrines of Indian Schools of Law. Therefore it may at once be conceded that Maine is the only one of our modern authors on Jurisprudence with whom the Indian student is likely to feel at home. And a good many of Sir Henry Maine's most valuable dissertations lie rather outside the needs of the ordinary Indian student.

It is also desirable for the Indian student that he should be constantly reminded of parallelisms or contrasts between Indian Law and Western Jurisprudence, and also have the Modern British-Indian Legislation brought to his notice as illustrating points of Law. These valuable factors in Comparative Jurisprudence were, no doubt, more brought forward by Sir Henry Maine than by any of the other writers whose works are commonly read in our Schools of Law at the present day. But they rather furnished Sir Henry with ideas which he proceeded to work out, or with side-lights which he threw on the general current of his discussions, than with a sort of running commentary such as that which pervades Dr. Rattigan's book. It must not be supposed, however, that the learned Vice-Chancellor, because he has seen a *lacuna* which required filling in our contemporary Literature of the Science of Jurisprudence, in any way neglects to refer his readers to the writings of his predecessors in the field. On the contrary, his pages are full of references to the best modern commentators and authors on Jurisprudence in

Germany as well as in England. Our only doubt is whether these references may not have a slightly alarming appearance to the average Indian student, and whether it might not have been better to present him with the results of the author's own wide reading in that field, with only a general bibliographical reference to the principal text-writers consulted. This, of course, does not apply to Western readers of Dr. Rattigan's book, and they would probably have complained if he had not given specific references. The British Legislation for India has, on the whole, been ably carried out on well-conceived lines, and this Legislation is naturally often referred to by Dr. Rattigan, as in the consideration of the subject of Contracts (p. 26), where he cites the Indian Contract Act as containing "definitions of Fraud, Undue Influence, and Misrepresentation, which could hardly be improved upon." This is high praise from one who has so wide an acquaintance alike with the Theory and Practice of Law; but it is, no doubt, well-deserved, and sets in relief the fact that, taken as a whole, our Anglo-Indian Codes are a worthy monument of the British rule, and one which may well be called *ære perennius*. That this Legislation has sometimes produced effects totally unexpected by the Legislators is, no doubt, also true, and is markedly shewn by such a case as that of Rukhmibai, and the analogous case in Burmah, where the action for the Restitution of Conjugal Rights—a conception of English Law, pure and simple, has been enforced among subjects of ours living respectively under Hindoo and Buddhist Law, under neither of which, we submit, can such an action be conceived of, much less instituted. It is to be hoped that advantage may be taken of the public feeling which has been aroused in India no less than in England by the case of Rukhmibai, to alter such provisions of our Anglo-Indian Legislation as have afforded a pretext for what would seem, from the latest phase of the case, to have been

practically little else than an attempt at extortion carried out under the cloak of the Law. The Burmese case (curiously coincident in point of time and nature of decision with the Indian), to which our attention was drawn by accounts given of it in an article by Mr. R. F. St. John, in the *Indian Magazine* (London: Kegan Paul, Trench & Co.), for March, 1887, has been less talked about in this country, but is quite as flagrant an example of the great harm which well-meaning Europeans, placed in Judicial positions in our Indian Empire, may do by a stolid adherence to the English Traditions of their education, and by an equally stolid disregard of Native Law and Custom. The idea of compulsion in married life is, we fully believe, entirely alien to the spirit of Buddhist Law, and should, therefore, not have been allowed a place in the mind of an English Judge administering the Buddhist Law among our Buddhist subjects, *ex hypothesi*, as he would have administered, or been supposed to administer, Mohammedan Law among our Mohammedan subjects, and Hindoo Law among our Hindoo subjects. It may be interesting to our readers, as we cannot possibly, from considerations of space, follow Dr. Rattigan through every chapter and section of his valuable Treatise, if we take a few salient points in the book, and contrast his treatment of those points with that which they receive at the hands of other teachers.

In his definition of Law, Dr. Rattigan prefers Bluntschli and Holland to Austin. But the Imperative idea seems to remain in, or at least not to be eliminated from, the *formulae* of both those Jurists, while it is of the essence of the Austinian definition, as it would appear also to be of the Kantian definition. When Kant tells us in his *Philosophy of Law* \* (p. 27) that "morally practical Law is a proposition

\* *The Philosophy of Law, an Exposition of the Fundamental Principles of the Science of Jurisprudence as the Science of Right.* Translated by W. Hastie B.D. Edinb. T. and T. Clark. 1887.

which contains a Categorical Imperative or Command," does he not substantially lay down Austin's canon? And is there really an essential as distinguished from a formal difference between Austin and the majority of the Modern School of English Jurists who profess to criticise and improve upon him? We are not sure that the limitations so strictly laid down as defining the province within which alone his system was applied have been always sufficiently considered or borne in mind by those critics.

With regard to Customary Law, the Vice-Chancellor of the University of the Punjab, writing in the midst of a people who are mainly kept together by Custom, is naturally emphatic in his assertion of its reality as Law, and of its value as a factor in building up the social edifice. In this view of the value of Customary Law in India we are quite at one with Dr. Rattigan, and Mr. J. H. Nelson, who has also strongly emphasised it in his *Plea for a Scientific Study of Hindû Law*. Indeed, we quite think that till of late our Scientific or Theoretical Jurists had almost entirely overlooked this branch of Law, while our practical Jurists, *i.e.*, our Judges, had, as Mr. Nelson and others insist, too frequently made Law when they professed only to be declaring a Custom. But even on this head, where Austin may seem most at variance with more modern notions of Law, we doubt whether it is sufficiently remembered that his limitations of the special province of his Treatise justify his disregard of Custom, for the purposes of that Treatise. For those purposes, undoubtedly, even *Manu* was not Law, and we cannot say that we are ourselves of opinion that modern research places *Manu* upon a higher Juridical pedestal than that which Austin would have assigned to it. It seems to be, at most, the Manual, so to speak, of the Customs of the Brotherhood, or Association, of the Manavas,—*Manava Dharma Shastra*—

and it was the influence of the Brahmin *Pundit* which made it a Legal authority for British India.

We quite admit, with Dr. Rattigan, that under Sir Henry Maine's brilliant treatment of it, Customary Law became "a new phenomenon in the Juristic sky," but we do not see that Kant applied that striking epithet to Customary Law, as might be inferred by an ordinary reader from the reference at foot of the page on which it is quoted. The reference was doubtless only intended as an acknowledgment of the source of the quotation, but it is an honesty which has a tendency to mislead. With Dr. Rattigan's own statement of the relation of Judicial recognition to Customary Law we are fully in accord. That relation is simply declaratory. The Judge declares what the Custom is; he does not make it Law for the first time, in the way in which the Prætor made Law by his Edict. His relation to it is perhaps rather more that of the *Prudentes, quibus permissum erat jura condere*. They built up the Roman Law by their *responsa*, while not professing to do more than give an opinion as to what the Law was. For many besides those whom the Vice-Chancellor of the University of the Punjab has specially in view in his book, this portion of it will be of considerable interest. To the members of the Judicial branch of the Civil Service, as well as to the Indian Bench and Bar, it cannot fail to be very suggestive. For there can be no doubt that the ordinary Western mind, trained in Legal systems having the full Austinian requirements, is ill fitted to cope with a system such as prevails so largely in India, where Customary Law underlies so much of what we call Indian Law, a necessarily vague term, covering as it does a vast area inhabited by races of the most widely differing origin and of the utmost diversity in their degree of culture. Moreover, in this vast area the various peoples who have come in the course of time to occupy some of the same portions of the earth's surface have very naturally exer-



cised a certain amount of influence over each other. The invading Aryan has subjugated the Dravidian or other pre-Aryan dweller in the land, but he has found it necessary to give him a place, though, of course, a relatively low one, in his own caste system. Even the sacred thread of the Brahmin is said to be somewhat loosely worn in these days by people whose title to it is admittedly doubtful. It may be, therefore, that not even the holy Brahmin caste is free from the presence of non-Aryan elements, and if this is possible of even that caste, how much greater may not the possibility be in other castes?

The Mohammedan, similarly, has not been unaffected by contact with the Hindoo, and of this interesting fact Dr. Rattigan gives us some salient illustrations. The followers of the Prophet are even to be found setting aside the Law of the Koran, in India, in the matter of Inheritance, to the extent of either excluding women altogether, or giving the widow a life interest in the estate, instead of her appointed fractional share. These things, and many others which meet us at various points in the pages of Dr. Rattigan's Treatise, amply demonstrate the importance of that *Customary Law in India* of which the learned author wrote so ably in this *Review*.\*

Passing to another point in the interesting volume before us, we may draw attention to the closely related notions of Possession and Ownership, the development of the doctrine of "Mine" and "Thine."

Possession is, as Dr. Rattigan justly remarks, a notion which was forced upon Man at a very early stage in his history. He plucked the fruits from the trees, and possessed what he plucked. So much for wild fruit. But when he took to planting trees and growing fruit himself, the notion of Ownership grew within him for that which

\* *Law Magazine and Review*, No CCLIV., for Nov., 1884.

he had planted and which his care had fostered. That was his very own, and trespassers began to be prosecuted, so to speak, in very early and rudimentary phases of Legal culture. The notion of Ownership is a particularly interesting member of the bundle of Legal conceptions, from the varied aspects which it has presented and yet presents, even in Europe. Indeed, if the Indian student had been directed more clearly to some of those survivals of Archaic Society which render the land of the Southern Slav so full of instruction to the scientific Jurist, we should have been far from thinking that Dr. Rattigan had stepped beyond his province. As it is, we scarcely feel that he has said enough in the way of directing attention to this branch of the subject ; but knowledge, fortunately, is daily growing in this fertile portion of the field of Jurisprudence. In losing Sir Henry Maine we have not lost the only Teacher who could advance our acquaintance with the House Community of South Eastern Europe. We are glad to be able to point to the valuable publications of the Society of Comparative Legislation in Paris, and to direct our readers to such recent sources of information as are furnished by M. Bogisitch in his outline of the Montenegrin Code, recently drawn up by him, and the very interesting account of the *Zadruga*, or House Community of Croatia, by M. A. Rivière, in the *Bulletins* for May and June, 1888. The details which M. Bogisitch gives in the May *Bulletin* of his work on the drafting of a Civil Code for Montenegro, could not fail to interest Dr. Rattigan, while the account of the varying fortunes of the Croatian *Zadruga* in the present day given by M. Rivière is of great value as shewing the deep roots which such Ancient Institutions as the Slavonic House Community have cast in the soil of South Eastern Europe, and how ill-advised are those Governments which think that they must try to uproot them, in the name, as M. Rivière somewhat scorn-

fully puts it, of Modern Civilisation. It is particularly instructive to note what M. Rivière enables us to follow, step by step, the resolution of the Austrian Government to take what it honestly thought, no doubt, was a step in the direction of Progress for the Croatian and Dalmatian Provinces of her Empire by the practical abolition of the *Zadruga* involved in the Law of 1874, which allowed unlimited partition, and prohibited the formation of new *Zadrugas*. But it was not long before the error which had thus been committed was seen. Union is strength. As long as they held together, the *Zadrugari*, or co-owners, were strong and could carry on all the operations required for cultivation on a large scale. Dis-united, severed from their old Community, and unable to found a new one, poor and weak, the former *Zadrugari* have discovered that Individualism might be bought at too high a price. And the Government has been obliged to recognise that it had taken a false step for the well-being of the Croatian and Dalmatian Provinces, where much of the land is now lying uncultivated for want of the Associations which alone had the men and the means to cultivate them. This is a serious matter for any country, and we cannot be surprised that at last even a Government should be forced by the stern logic of facts to shelve its theories, and gradually work back to something as near the *status quo* as it may find possible. The lesson taught by the well-meant efforts of the Austrian Government in Croatia and Dalmatia may be one not without instruction for ourselves, whether in India or in other parts of that vast agglomeration which we call the British Empire, embracing, as it does, races so diverse as the Aryan and the Negro, and ranging so widely in culture, from the polished French Canadian to the wild Pathan, and even wilder Veddah. Some points suggested by the account which M. Bogisitch gives of the Civil Code of Montenegro in the *Bulletin* of

the Society of Comparative Legislation for May, are points on which we should have been glad to have found an indication of Dr. Rattigan's views, as they might have presented themselves to him in his survey of the field of Jurisprudence. M. Bogisitch alludes to the Dualism (whether real or alleged) traceable as far back, he believes, as the *Jus Connubii* and *Jus Commercii* of the Romans, between Family Law and the Law of Property. As a Codifier he found himself confronted with this as a practical question, involving the position which he should give to the Law of Succession in the Montenegrin Code. Should he place it under the Law of Property, or under Family Law? All things considered, and especially the peculiar characteristics of the Serb Family, M. Bogisitch decided in favour of placing Succession Law under the Law of the Family, and from the point of view of his clients, if we may so call them, we do not question that he decided rightly. There can be no doubt, we apprehend, that the Codifier will thus at least have placed the Law of Succession in that portion of his work where a Montenegrin would most naturally look for it, and that may well count for something, even elsewhere than on the Black Mountain.

We are not sure, indeed, that Dr. Rattigan might not have included the subject of Codification within his purview, and then, perhaps, we should have had more of his opinion on some questions which have not practically been touched in his present volume. Again, we should have welcomed some expression of his views on Constitutional Law, a topic which is among those whose absence we regret from his pages. International Law, on the other hand, he does touch upon at some length, we are glad to note, and upon the views expressed we must offer a few remarks, as the subject is one of great and increasing practical interest. There are, of course, occasionally points on which we are not able to agree with the learned author, or rather the author

from whom some of his text, *e.g.*, that on International Criminal Law, taken from Von Bar, is derived. We do not propose, however, to differ from Dr. Von Bar while it is the views of Dr. Rattigan himself which more immediately concern us. The account given of the growth of Private International Law in Chapter XI. is brief but interesting. The Burghal Community, with the Law of Domicile which flowed from it, is contrasted with the Personal Law of the *Professiones Juris* of the early Middle Ages, by which men declared the Law under which they lived. But these Professions had a wider scope than it seems to us that Dr. Rattigan's language gives them when he explains them (p. 232) as documents by which persons declared by what Law they "wished to be bound." A man was bound, we take it, *quà* Lombard to live under Lombard Law, *quà* priest to live under Roman Law. These *Professiones* have, indeed, from the very circumstance of the inherence of a particular Law in a particular race or class of men, a distinct ethnological and genealogical value, and hence it is that the fact of the profession of Roman Law by the earliest ascertained ancestor of the House of Savoy in itself disposes of the theory of its Saxon origin, and taken in connection with the Christian name of that ancestor and the situation of his lands, assigns to him very plainly a Burgundian or Gallo-Roman origin. In Chapter XIII., on International Law proper, so to speak, or the Law which governs what he calls the "inter-relation of States," Dr. Rattigan appears to have simply followed Bluntschli in assuming the Middle Ages to have been nothing better than a period of "Club Law." This, we must remark, is, to any student of Mediæval Law and History, an utterly misleading, one-sided, and unwarrantable view of the Middle Ages. It is not necessary to cry up the Middle Ages as the Ages of Faith, with the somewhat visionary fervour of the posthumous volumes of Montalembert's

*Monks of the West*—volumes, be it remembered, which do not represent the later and riper judgment of the distinguished historian of Monasticism. But it is equally unnecessary, unphilosophical, and untrue, to cry them down as one long, dark period of *Faust-recht*.

It is impossible for us, at the close of our survey of Dr. Rattigan's interesting volume, to enter upon a detailed defence of the Middle Ages, and it would be utterly beyond the scope of our present Paper. But we must express our belief as students of Mediæval Law and Mediæval History, who have found much to study therein, that the Ages which produced an Irnerius, a Vacarius, an Accursius, a Baldus, a Bartolus, not to speak of a Harmenopulos, and others whose Treatises are still read in Eastern Europe, cannot have been, either in the Eastern or Western portions of the Roman Empire, a mere period of "Club Law." And we specially regret that Indian students, who may not have ready access to the evidences against Bluntschli's very misleading view, should be presented with that, and with that alone, by one who is in other respects so sound and careful a *Duca*.

But we cannot part from this our *Duca* in sorrow. We must part from him in the confidence that he will give to some of the exceptions which we have occasionally taken to his language such consideration as he may find them merit. And we are sure that whoever, whether he be an Aryan of *Aryavarta*, or an Aryan of the Western Family, shall take in hand the serious study of Dr. Rattigan's *Jurisprudence*, will find in Dr. Rattigan a *Duca* as generally tender of his needs as was the great Mantuan of old to the *Sommo Poeta*, who journeyed with him through mystic Realms, until it was time once more to come forth and *riveder le stelle*.

## Quarterly Notes.

### General Boulanger and Mr. Parnell.

It is a remarkable and, we believe, a significant coincidence that on the same day, viz., 12th July last, General Boulanger and the Irish Separatist leader were treated as persons of such pre-eminent distinction that the laws of France and England were acknowledged to be too feeble to protect their respective reputations. On the self-same day, be it noted, both of these notorieties were placed above the Law. The one was so placed by the Prime Minister of France condescending to engage in personal combat with the would-be Dictator; the other, by the Government of the still United Kingdom consenting to create for the "uncrowned King" a special and extraordinary Tribunal to enquire into charges which he has shewn himself unwilling to submit for investigation to a jury of his countrymen. In both cases we fear it cannot be doubted that a severe blow has been dealt at the cause of Law and Order. As Englishmen, we need not stay to examine anew those threadbare and antiquated arguments which have in days of yore done duty as warranting an appeal to the private arbitrament of the sword. Our countrymen are not one whit less sensitive when their honour is affected, or in the smallest degree inferior in physical courage to their more excitable neighbours across the Channel. And yet, *pace* Bentham, they have long since come to regard a resort to brute force for the settlement of their private disputes as a falling back into that imperfect state of Civilisation from which they have happily emerged. This, however, is not the sole or even, perhaps, the principal consideration which has caused duelling to fall into disrepute among us. Its desuetude is

mainly attributable to the acknowledged patience, rectitude, and absolute fairness and impartiality of those entrusted with the administration of Justice in our land. So complete is the confidence which they have hitherto inspired in the minds of Englishmen that they cheerfully entrust to our Judges and Juries their dearest and most delicate interests. Until quite recently, no responsible person has ventured to question the competency of our Courts to decide all issues, whatever might be their nature and character, or whatever might be the position of the parties concerned. It was indeed only last year that the House of Commons, in proof of its confidence in our ordinary Tribunals, resolutely refused the departure from the regular course of Justice for which Mr. Parnell and his associates so vehemently clamoured. That the Government should now have relinquished a position which it so short a time back assumed,—a position, moreover, which the approval of the Nation seemed to have rendered impregnable,—is a circumstance on many grounds to be profoundly deplored. By its newly created precedent, the Cabinet has assented to the doctrine that a member of the House of Commons whose honour is called in question is entitled to privileges which are to be withheld from an ordinary citizen. In other words, it has affirmed the principle that when a private person conceives himself to have been calumniated, he is to be relegated to the ordinary Courts, whereas a member of the Lower House of the Legislature who finds himself in a similar position, may lay claim to vindicate his character before an extra-Judicial tribunal, specially constituted with specially defined powers expressly created for his own especial behoof. This is the lesson which has been inculcated by the offer to Mr. Parnell of a Special Commission.

It is obviously beyond the scope of this *Review* to enquire into the political exigencies, if any there be, which may have conduced to the adoption of such a course of pro-



cedure. As we observed last year, when approving the refusal of a Select Committee to investigate these self-same charges, we are not concerned with questions of political expediency. Politics apart, though, there can be no possible doubt that by its present concession the Government has given in its adhesion to a doctrine of dangerous import, calculated to undermine the faith reposed in the administration of Justice, and inevitably lending countenance to the attitude of mistrust and suspicion taken up towards the legally constituted Courts of this country by those who have themselves entered into a pact with Lawlessness.

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#### **The Land Transfer Bills, 1887 and 1888.**

Our readers will probably remember that, when the Land Transfer Bill of 1887 purported to render registration "compulsory" by making it a necessary condition to the passing of the *legal* estate, the article on *The Postponed Land Transfer Bill* in this *Review*, No. CCLXV., for August, 1887, by Mr. Rumsey, contained the suggestion that, in order to 'make Registration really compulsory, the Legislature must provide that there shall be no *legal or equitable* estate or interest without it. The framers of the Bill of 1888 have taken an important step in the direction thus indicated by providing that a mere conveyance of land (other than a mortgage) shall not confer *any* right except the right to be registered as owner. For it is clear that "any right" cannot be construed otherwise than as signifying any *legal or equitable* right. In several matters of detail, *e.g.*, in expunging the words, "operate only as a contract," in substituting "The High Court" for "The Court" at certain parts, and in defining the word "land" so as to remove one ambiguity as to its comprehensiveness, the framers of the Bill have adopted, or, at least, acted in accordance with, the suggestions made in our pages by Mr. Rumsey. On the

other hand, they have disregarded those suggestions on some points ; for instance, they still include certain sweeping provisions for the reform of the law of Real Property in a measure purporting to be merely a " Land Transfer " Act, a course which appeared to our learned contributor to be open to grave objections ; and they still seem to leave it doubtful whether " land " is to include incorporeal hereditaments or not. We cannot yet form any very definite idea as to the ultimate condition of the Land Transfer Bill ; but it is satisfactory to see that those who have the care of it are not so firmly wedded to their own esoteric views as to reject all friendly co-operation from without ; and we may perhaps hope that a good many more ambiguities and other blemishes may be removed before the Bill becomes law.

## Reviews.

*Historical Introduction to the Private Law of Rome.* By JAMES MUIRHEAD, LL.D., Professor of Roman Law in the University of Edinburgh. Edinburgh : A. & C. Black. 1886.

We have already indicated in the pages of this *Review* our indebtedness to Professor Muirhead for his previous valuable labours in the field of Roman Law in connection with the great Institutional writer, Gaius. We have now to repeat our sense of obligation for the service which he has rendered to all students of Jurisprudence by the Manual which he gives us for the study of the *Private Law of Rome*.

The volume, which is a fairly thick one, though outdone in point of size by Van Leeuwen's *Roman-Dutch Law*, noticed in our last issue, has grown out of an article originally drawn up as a *résumé* of the subject for the new edition of the *Encyclopædia Britannica*. The Publishers of the *Encyclopædia* rightly thought

that the subject was so handled as to constitute a Treatise in itself, and that it deserved separate publication as such. Hence the appearance of the work now before us. It is, of course, impossible that the book in its present shape should be without any traces of its original purpose. The somewhat formal Bibliographical foot-notes to chapters and sections, embodying the "Literature" of the particular subject matter, are clearly survivals of the *Encyclopædia* article. This does not detract from their utility, which, their source being Professor Muirhead's wide erudition, is naturally very considerable. It would, perhaps, have given the valuable information contained in the Bibliographical foot-notes less of the appearance of an *Encyclopædia* survival if they had been thrown together, under the heads of their respective subjects, in a general Bibliography of Roman Private Law, such as we may possibly hope to see in a second edition. Of the great value of such a Bibliography, when drawn up by so authoritative a pen, it is quite unnecessary to insist in this *Review*. It speaks for itself.

The topics of interest to the student of Jurisprudence in such a book as Professor Muirhead has now given us are so numerous and so full of suggestiveness that we cannot possibly do more than touch on one or two of them, in the present notice, though it is quite likely that we may discuss them further in connection with kindred Juridical Treatises.

What was the "Genesis of the Roman State"? The answer must clearly be, as given by Professor Muirhead in the opening section of his book, under that title,—a mixed origin, in which Latin, Sabine, and Etruscan elements are traceable, though the proportions of their respective influence may still be open questions. We are not sure, for instance, that Archæology is not advancing in the direction of giving a greater prominence to the Etruscan element than the rather scant recognition which is all that our author allows it. That the ideas of Power and Discipline should be cardinal points in the Latin element is no doubt consonant with the general tenor of the history of the Roman State and of the Latin world, in their largest sense.

*Manus* is power, and the *Paterfamilias*, the Patriarchal head of the family, holds those who are members of the Family under his power. They are under his hand, his protecting hand from one point of view, of course, and also his corrective hand from another point of view. But this all-powerful position of the

Head of the Family or Community is not solely or peculiarly Latin or Roman. It is Indian and it is Slavonian. It is suitable to a certain stage through which the human race passes, but it breaks down under contact with later stages of Civilisation. We find it a still living force in the House Communities of the Southern Slavs; but we also find that it exists in its strongest form among the communities of the Adriatic Coast, which appear to have retained most of their primitive character, while it gives way under pressure of contact with other and later forms of Civilisation such as meet it inland. "We are not here in the coast country," a son has been heard to say to his father, "where fathers are everything and sons nothing." Such is the personal testimony of the latest Slavonic investigation of living Slav Customary Law, Professor Bogisic, as cited by the late Sir Henry Sumner Maine in one of his own later works, *Early Law and Custom* (London, 1883), p. 244. These facts, which are constantly being brought to our notice by the application of the Comparative Method to the study of Jurisprudence, are both interesting in themselves and useful as correctives of the rather natural tendency to look at Roman Law solely through Roman spectacles. The Romans themselves very naturally fell into this error, and honestly believed that nothing like their *Patria potestas* was to be seen anywhere, except perhaps among the Galatians.

The notion of power in the *Paterfamilias*, it may be noted, is, considering the necessary conditions of age, scarcely separable from the notion of wisdom as inherent in age. The *Paterfamilias* represented both ideas, and the veneration paid to age among savage Tribes is a common-place in the descriptions of writers of accounts of such races. And how long this veneration lasts, is another point illustrated by the Southern Slavs, among whom it is a proverb that "a father is like an earthly god to his son." They even go the length of saying that the reason why the Devil knows so much is that he is so very old! It seems, therefore, hardly fair to rest the conception of the Roman *Paterfamilias* solely on the persuasion that "might makes right," as Professor Muirhead appears to rest it. With regard to the position of the Debtor under the Law of the XII. Tables, we entirely agree with the repudiation by Professor Muirhead of the "pound of flesh" theory, which attributes to the early Roman State a barbarism not only in itself, as we believe, incre-

dible, but also, which is perhaps even more important, though the point seems to have escaped the learned author's notice,—quite at variance with the religious character generally associated with the practice of anthropophagy, and equally at variance with its other element,—the idea of acquiring the virtues of the deceased. Certainly, the virtue of punctual payment of dues could not be acquired by eating one's debtor, on any known theory of Early Man. That such views of Roman Law should be put forth in our own day, and with much display of learned argument, seems to reveal the existence of a curious mental warp among some schools of Juridical Thought.

The relations of Citizen and Non-Citizen, and the development of the *Jus Gentium* afford Professor Muirhead matter for much very interesting discussion. We cannot say that we like his word "peregrin," avowedly coined for want of an adequate term in our existing legal language. "Alien" and "foreigner" being alike rejected as insufficient, and "non-citizen" being not only an awkward word, but also inadequate, our author has fallen back upon a mere Anglicised form of the original Roman Law term. It would have been better, we think, to have used *peregrinus* and *peregrina* without attempting to translate them, and, indeed, "peregrin" can hardly be called a translation. The growth of the *Jus Gentium* is clearly associated with the growth of Roman intercourse with other nations. But we shall do well to remember Professor Muirhead's warning not to take the words of the Roman writers on this subject too literally. They spoke of it as the "Law common to all mankind," and perhaps they said this so often that they came to be persuaded of its truth. The real fact is, as our author insists, that it was "Roman Law, built up by Roman Jurists," but under the exigencies of an increased and increasing intercourse with other nations whose needs could not be met by the narrow rules of the purely Municipal Law of Rome, the Law which governed the Roman citizen. The *Jus Gentium*, thus developed, naturally made itself felt chiefly in Family Law, and in the Law of Succession. We can only touch here on one point, which is still a subject of much misunderstanding. The early Roman Law of Marriage seems harsh to modern eyes. The real fact, of course, is that it embodies the sentiments of the days when the *peregrinus* was called *hostis*. Such an one clearly could not enter into the Roman Family system: he could have no

place there. *Iusta nuptiæ*, the Civil Law Marriage, could as clearly only be celebrated by Roman Citizens as between themselves. In later times, when the intercourse of Rome with foreign nations was growing, this exclusiveness had to give way under the softening influence of the *Jus Gentium*, and a marriage *Jure Gentium* was allowed to the *peregrinus*, while, still later, the celebrated Constitution of Antoninus Caracalla practically effaced the distinction between Citizen and Non-Citizen by making almost everybody in the Roman Empire a Citizen. Here, again, we could have wished to find Professor Muirhead noting Sir Henry Maine's interesting parallel with Hindoo Law. Discussing the modern theories of Exogamy and Endogamy in his *Early Law and Custom*, pp. 222-3, after indicating his own doubt whether any Society exists which is not in a certain sense at once Exogamous and Endogamous, Sir Henry shews that this was the case with Roman Society by reference alike to the Roman List of Prohibited Marriages, which falls within a circle "not widely differing from that traced by our own Table of Prohibited Degrees," and to the invalidity of "any marriage of a Roman Citizen with a woman who was not herself a Roman Citizen, or who did not belong to a Community having the much-valued and always expressly-conferred privilege of *Connubium* with Rome." And then he proceeds to shew us exactly the same mixed Exogamy and Endogamy prevailing in India under the caste system of the Brahman-ruled Hindoo.

But Sir Henry Maine goes further afield than India: the arrested Civilisation of the "Middle Kingdom" supplies him with yet another illustration in still living Clan customs of the Chinese Empire. There we meet—as in the Hindoo case of the *gotra* and the Caste, the *gotra* within which marriage is not permissible and the Caste beyond which it is unlawful—with the same mixture of the assumed contradictory rules of "Exogamy" and "Endogamy" in the Clans which are "externally Endogamous," *i.e.*, refuse marriage with any surrounding tribe, while they are "internally Exogamous," and refuse marriage with anyone whose surname shews him to belong to the same stock.

If we have seemed to dwell somewhat at length on a few points only in Professor Muirhead's lucid and interesting work, it is because our personal sense of its value leads us to wish that he may see his way to increasing that value in future

editions by weaving into his text fuller illustrations of Roman Private Law from Comparative Jurisprudence.

*Kant's Philosophy of Law.* Translated by W. HASTIE, B.D. Edinburgh : T. and T. Clark. 1887.

This is necessarily an interesting book, and we have referred to it in another part of our current number, in connection with some of the illustrations which it affords of the Science of Jurisprudence, and shall therefore only speak here of a few points of difference rather than of agreement. We must, however, confess to a feeling of disappointment at the not unfrequent contradictions, or at the least apparent contradictions, in Kant's language, and also at his utterly retrograde notions on Constitutional Law. We can set aside his belief in the Social Contract, as a harmless piece of Eighteenth Century Philosophy, which was not without a certain influence for good in its day. But what can we say of his absolute denial of the right which gave Great Britain its fulness of Constitutional freedom in 1688? If we are to go back, with Kant, to the days of Passive Obedience, we may as well shut up our Hallam, our Stubbs, and our Taswell-Langmead, and sit in sackcloth and ashes for that we were ever naughty enough to read them and believe in them. Doubtless, a Bismarck, after having made his Emperor at the expense of a certain number of enforced Monarchical retirements from business, would not object to such a doctrine, but we cannot accept it, and we do not like its propagation here under the *agis* of so great a name as that of Kant. It is, of course, true that Kant talks sometimes as though he accepted Constitutionalism, as on p. 167, where he claims Constitutional Freedom as one of the Juridical attributes which inseparably belong to the Members of a Civil Society. But it is equally true that, on p. 176 he takes away what he had given on p. 167, when he says that Resistance to the Supreme Legislative Authority is in no case Legitimate, and "forcible compulsion" of the dethronement of a Monarch "cannot be justified under the pretext of a *casus necessitatis*." Again, he speaks in the same part of his work of the "so-called limited Political Constitution" as being an "unreality." Kant's name is a great one to conjure by, and therefore it has seemed to us a duty to single out rather the points whereon he gives an uncertain sound,



or whereon our views of Political Science and Constitutional Law differ radically from his own, in so far as his views differ radically from those which have made this country what it is. We are none the less grateful to Mr. Hastie for putting into our hands this interesting summary of the Juridical aspect of Kant's mind.

On Public Right, and the *Jus Gentium*, Kant's views appear to us equally full of antinomies, and of regrettable misconceptions. Thus he lays it down that, naturally, States viewed as Nations, are in their external relations—like lawless savages—in a non-juridical condition, and, further, that this condition is a "State of War." Again, he holds that *Inter arma silent leges*, a maxim quite opposed to those Ameliorations for which, in a recent number of this *Review* (*Law Magazine and Review*, No. CCLXVI., for November, 1887), the distinguished American Jurist, Mr. Dudley Field, pleaded so earnestly. *Per contrà*, we find Kant against the employment of spies, poisons, or even the dissemination of false news in war. This last provision might hit some war correspondents rather hard. And we find him advocating a Federation of the Nations, as the best means of securing Peace and preventing War. This *Fœdus Amphictyonum* may be a dream, but it is a generous one, and with it we will for the present take our leave of Kant's *Philosophy of Law*.

*A Short History of Russia.* By J. A. SHEARWOOD. Reeves and Turner. 1888.

It has been said lately by no less an authority than the distinguished Belgian publicist, Emile de Laveleye, writing in the *Forum* (New York: Forum Publishing Co.) for April, 1888, that the Coming Nations, in whose hands the Future lies, are Russia and the United States. This is the view of an independent thinker, an outsider, so to speak, one of those bystanders who proverbially see most of the game. Whether the Belgian Professor be right in his forecast or not, it is obvious that we have a great interest, in this country, in understanding Russia, whose boundary at certain points practically touches our own, whose development in the direction of the Hindoo Koosh has for years been so steadily carried on, and whose further development is scarcely matter for speculation but rather for calculation.



Mr. Shearwood, feeling our need of a more general acquaintance with Russian history has come forward opportunely to supply the need with his *Short History*. The story which he has to tell is that of a nation long isolated from the rest of Europe, and still too little known to the West. It is the story of a nation still, to a great extent, in the infantile stage of Civilisation, and designedly kept so by its rulers. Peter the Great only succeeded, and could only succeed, in giving the merest veneer of Western Civilisation to Russia, and the greatest dangers which Society runs in Russia are due to the childish ignorance of the people, and their childish readiness to blow up Society in order to see what a pretty shower of sparks would fall, or to pull the watch to pieces to see what the works are like. Moreover, Authority, or rather Bureaucracy, which is rampant and all-powerful in Russia, designedly mixes up the most innocent Constitutional Liberals with the Hartmanns and believers in bomb-shells and hand grenades, under the fear-inspiring name of Nihilists. This is very much like the Pope, who always mixes up Anglicans, Protestants, Freemasons, Atheists, Revolutionists, and Infidels, in one grand confused mass of damnable Unbelief. In neither case does the proceeding seem to be one savouring of Philosophy. There are some peculiar forms employed by Mr. Shearwood which we hope he will discard in his next edition. We do not know "sujerainty" as an English word, and should gladly set it down as a misprint. But, even taking the word in the form which it properly bears, we are bound to oppose the facts of Mediæval History to the crotchet which we fear Mr. Shearwood must have adopted, and which we have, somewhat to our amazement, seen seriously broached in recent numbers of *Notes and Queries*, to the effect that Suzerain means Under-lord, while the direct contrary is the fact. Of course, in the highly complex hierarchy of Feudalism one man's Suzerain, that is Over-lord, might have another Suzerain over him. Thus, theoretically at least, every Sovereign on the Continent, in Western Europe, owned the Western Roman Emperor for his Arch-Suzerain, the apex of the Feudal Hierarchy, and the Pope and the Emperor quarrelled over their own special relations to each other. But there is no admissible Philological or Historical doubt as to the fact that Suzerain means Over-lord, just as there is no doubt that an Allodialist had, and could have, no Over-lord.

*A Handbook of Written and Oral Pleading in the Sheriff Courts of Scotland.* By J. M. LEES, M.A., LL.D., Advocate, Sheriff Substitute of Lanarkshire. Glasgow: William Hodge. 1888.

Sheriff Lees, to whom we have been indebted for a valuable account of *Sheriffs and Sheriff Courts in Scotland* (*Law Magazine and Review*, No. CCXLI., for August, 1881), has produced in this *Handbook* most excellent and useful work. It is a valuable repertory of instruction to the Scotch practitioner as well as an interesting volume to the English lawyer. In a small manual of about 200 pages we have a clear and admirable exposition of the pleadings and conduct of Civil and Criminal actions in the Sheriff Courts of Scotland. There the reader will find that the author is not unacquainted with English procedure; how far the Condescendence and the Defences in Scotland correspond to the Statement of Claim and the Defence in England; how far useful are explicit Pleas in Law in Scotland in giving definiteness to Scotch Pleadings; and how far closing the Record, preparing for Proof and the like correspond to English modes of Pleading. Certainly, something is very much needed to give definiteness to English pleadings, and to settle the issues before the trial. Trifling cases—indeed all cases—before the Inferior and Supreme Courts in England now take up too much time. In Mr. Lees's Handbook some useful hints will be found for the legal practitioner as to leading evidence in a cause, cross-examining and re-examining witnesses, and as to objectionable questions. At p. 13, in the 8th line, "Defendant" has been misprinted for "Pursuer." In Scotland, the terms corresponding to Plaintiff and Defendant are Pursuer and Defender. All Summonses or Court Papers which require to be served on litigants are, in Scotland, delivered by regular officers of the Court for moderate charges. No poundage dues are payable on Decrees in any of the Scotch Courts, and all the fees paid to the Court and the Solicitors are small. In England the official fees in the County Courts are scandalously high. Where disputes are litigated in the ordinary, but not in the summary Sheriff Courts, all the documents founded on have to be lodged with the Clerk of the Court to be examined, and even borrowed, and all documents referred to in the Pleadings have to be produced by the parties in possession of them, when called for. It may be well to remind our readers that the distinguishing feature of all Criminal Jurisdiction in Scotland as compared with English Criminal Jurisdiction is that as soon as

a complaint is taken up by the Police Authorities, or a person is apprehended on a criminal charge, the whole of the proceedings are conducted by a public official at the public expense. This public official, is called the Procurator Fiscal in the Inferior Courts, and the Lord Advocate in the Supreme Court of Scotland. A similar practice in England would be a great saving to the poor, and a great improvement in the administration of Justice in this country. Some day, perhaps, the English people will take a lesson from the Law of Scotland as to this important public matter. The Judges of the Sheriff Court in Scotland have unlimited jurisdiction over Civil disputes, except in a few real actions, and have also Courts for cheap, speedy, and summary jurisdiction, in which the costs cannot exceed a few shillings, for claims not exceeding £50. They have also an extensive Criminal Jurisdiction as to the most common sorts of crimes. They are thus endowed with a jurisdiction which is a compound of the Civil jurisdiction of the English High Court of Justice, and of the County Courts and Courts of the Recorders in England. Except on rare and extraordinary occasions, the ordinary Scotch Solicitors, and they alone, practise in these Courts, in which no Counsel's fees, without the sanction of the Court, are allowed against the opposite party. We think that this combination of Civil and Criminal Jurisdiction is of the highest advantage in the administration of Justice, and might advantageously be imitated in our Inferior Courts on this side of the border.

*The Roman Law of Damage to Property.* Being a Commentary on the Title of the Digest *Ad Legem Aquiliam* (IX., 2), with an Introduction to the Study of the *Corpus Juris Civilis*. By ERWIN GRUEBER, Dr. Jur., M.A., Reader in Roman Law in the University of Oxford. (Oxford: Clarendon Press. 1886.)

The distinguishing feature of the treatment of the *Lex Aquilia* in Dr. Grueber's work consists in the dual functions which the Treatise (apart from the Introduction) is intended to perform. "Part I.," as he tells us in his Preface, "contains an interpretation of all passages of the title '*Ad Legem Aquiliam*' in the order in which they follow each other in the Digest. Part II. is devoted to a systematic exposition of the Roman law of damage to property. Thus the two chief portions of the book" (the

other portion being the Introduction) "form distinct and severally self-sufficing treatises." And thus, as the author points out (at greater length than is necessary here), the reader may either study the *Lex* itself, taking its clauses *seriatim* as found in the Digest, or he may systematically study the law of Damage under the author's direction, without regard to the order of the passages in the record. Parts I. and II. are, therefore, somewhat like an edition of a codifying Act of Parliament with notes, preceded or followed by a methodical Treatise on the subject (be it Wills, or Inheritance, or what not) with which the Act purports to deal. The advantage of such a mode of treatment is that it makes the book useful for two distinct purposes. It is true that it involves, as Dr. Grueber admits, a considerable amount of repetition; but this is not a serious defect so long as each argument or aphorism drops into its proper place on its second appearance. By the course adopted, the author aims at something higher than the mere exposition and illustration of successive passages, for he proceeds to shew "how out of the single decisions and enactments a system is developed." It must be understood that each part is really *teres atque rotundus* in itself, so that it can be studied independently, without any reference to the other part. Dr. Grueber naturally omits the second "caput" of the *Lex Aquilia*, which in the opinion of Gaius is not altogether necessary, and according to Justinian *in usu non est*.

So much for the method of the principal portions of the book before us; as regards fulness of treatment there is certainly nothing wanting. We all know that any amount of pages may be written on any given branch of law, especially of Roman Law. Thus, unless a commentator wishes to weary his readers, he must exercise some judgment as to the amount of matter that he admits. Upon the whole, such judgment seems to be soundly exercised in this book, though occasionally some prolixity of explanation is indulged in on a point of small importance, *e.g.*, in the confutation—perhaps we should rather say criticism—of Ulpian's statement as to the "derogation" of all earlier law, for the author admits in the end (p. 196) that Ulpian's statement is virtually, if not literally, correct. On some points we are obliged to dissent from the author's views. At p. 169 a Roman decision is recorded that is apparently unjust, a shop-keeper being considered liable for an injury done unintentionally to a thief in the endeavour forcibly to recover the stolen

property, unless the thief has first struck him with a whip. Dr. Grueber seems to accept the doctrine as just, because the shopkeeper himself "caused the struggle;" but such a principle savours more of the doctrine, "*La propriété, c'est le vol*," than we should have thought likely to find favour in the Schools of Oxford, altered though they be since our day. It is, perhaps, a little arbitrary to fix the date of the *Lex Aquilia* (pp. 3, 184) by the double assumption that the words *tempore discordiæ* must necessarily indicate a struggle between the Patricians and Plebeians, and that the struggle referred to must necessarily be the Third Secession of the *Plebs*. At p. 25 the words *medicamento perperam usus fuerit* are translated "has *wrongly* used a *bad* medicine," which is clearly incorrect and tautological. We find the corresponding words in the Institutes rendered "giving him a wrong medicine" by one translator, "giving him wrong medicines" by another, "administered improper medicine to him" by a third. But Dr. Grueber's peccadillo is no doubt accidental; we would almost lay a wager that he hesitated some time between the adverb and the adjective, and forgot to strike out the one when he finally decided for the other. On the same page, the words "under the contract *as well as* under the *Lex Aquilia*" should be "*either* under the Contract *or* under the *Lex Aquilia*." Perhaps this is really meant, but the words actually used may signify that the injured person can avail himself of more than one remedy at the same time (like a mortgagor according to English law); and the Latin passage under consideration gives no warrant for this. As a rule, Dr. Grueber is a careful and satisfactory translator, and he is the more to be commended for this, because he translates into a language not his own. There are translators of English birth and education who would do well to take a lesson from him in conscientious accuracy of rendering.

Of the "Introduction" it need only be said that it contains rules of construction adapted to the particular case of the *Corpus Juris Civilis*, and a useful enumeration, with dates, of the works or compilations of Justinian, collectively known by that familiar name.

*Will Making made Safe and Easy: An Aid to Testators, with a great variety of Forms, and the Rules of Descent of Real and*

Personal Property on Intestacy. By ALMARIC RUMSEY, Barrister-at-Law. John Hogg. 1888.

Small books on great subjects are difficult to write, and perhaps not much less difficult for the reviewer to notice. Mr. Rumsey has here taken in hand what is unquestionably a great subject, and his conscious endeavour has been to compress what appeared to him to be the most necessary information within the smallest practical compass. Moreover, several distinct classes of readers had to be borne in mind: (1) the class who wish to prepare their own wills, and often make a nice mess of it; (2) the country clergy, who are constantly asked to help their parishioners to make their own wills; (3) lastly, but not perhaps least, the country solicitors, who are very apt to be called upon at short notice, or no notice at all, to draw wills which may involve considerable interests. That this last class may not be the one least needing a pocket companion to will making, is well shewn by an anecdote told in Mr. Rumsey's Preface, of a case within his own knowledge, and by which a charitable institution lost a valuable bequest through want of accurate recollection of the Law of Mortmain on the part of a country solicitor.

The illustrations, from actual practice, of what has been held to constitute a Will, and been admitted to Probate as such, are in some cases very curious. The Forms for Sailors are partly based on actual decided cases, such as *In the Goods of Saunders*, 1 L.R. P. & D. 16, and some of the information embodied as to both services is of the latest and most authoritative character, having been communicated officially by the respective Departments while the book was passing through the press. Some of the exceptions to the powers specially accorded to soldiers seem rather deficient in principle. Thus, a soldier in barracks, even in a Colony, has been held not to be on actual military service. Yet he forms part of the garrison of a Colony, if in Colonial barracks; and, whether at home or in the Colonies, may at any moment be called out to support the Magistracy and restore the Queen's Peace, and may lose his life in so doing. The exception, therefore, seems in his case to defeat the end of the general indulgence so long accorded to Wills *in procinctu*. We are not sure how far Mr. Rumsey believes that Will making can be made really safe and easy. His own frequent cautions to those who may use his book shew that he is fully alive to the difficulties which may beset the path of the Testator—and we cannot even say the “ordinary” or “average” Testator—for the Wills of

great Legal luminaries have been known to give rise to no small amount of litigation. In point of fact, it is almost as necessary for Mr. Rumsey to say "don't " do this, as "do " this. As far as possible, he gives throughout the reasons for either form of advice, and, taking his little volume for what he desires it to be, we can commend it both to those who have no legal adviser at hand, and to the country practitioner himself, as a handy manual for ready reference.

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THE  
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IN THE  
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BY  
C. H. LOMAX, M.A., OF THE INNER TEMPLE,  
*Barrister-at-Law.*

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# Quarterly Digest

OF

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Law Reports, Law Journal Reports, Law Times  
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FOR AUGUST, SEPTEMBER, AND OCTOBER, 1887.

By C. H. LOMAX, M.A., of the Inner Temple,  
Barrister-at-Law.

## Act of Parliament:—

- (i.) **Ch. D.—Construction—Repeal—Public Undertaking—Easement—Ancient Lights—Lands Clauses Consolidation Act, 1845, s. 68—Lands Injurious Affected.**—By an Act incorporating the Lands Clauses Act the Metropolitan Board of Works were empowered to acquire specified land for the G. improvement (amongst others), and to purchase easements over such land. They were required by section 33 to sell or let specified portions for artizans' dwellings, and the land to be cleared by degrees and a minimum number of dwellings to be provided. By an amendment act, section 33 was repealed as to the G. improvement, and they were required to devote three plots of land, the subject of such improvement, to provide a minimum number of dwellings. *Held* (1) that provisions as to selling or letting similar to those in section 33 were implied in the Amendment Act; (2) that an adjoining owner could not restrain the Board's tenants from interfering with his ancient lights, but must obtain compensation from the Board; (3) that the Board could not impose on their tenants a liability to be restrained from constructing the artizans' dwellings so as not to interfere with ancient lights.—*Wigram v. Fryer*, L.R. 36 Ch.D. 87; 57 L.T. 255.

## Administration:—

- (ii.) **P. D.—Creditors—Pauper Lunatic—Expenses of Maintenance—Right to Recover—12 & 13 Vict., c. 103, ss. 16, 17.**—Deceased had been maintained as a pauper lunatic for more than six years prior to her death. After her death the Guardians discovered that she had throughout been entitled to a Government annuity. *Held*, that the Guardians were entitled to administration. *Held*, also that they were entitled absolutely to be repaid one year's expenses, and to prove as ordinary creditors for five years' further expenses.—*Guardians of Lambeth v. Next of Kin of Bradshaw*, 57 L.T. 86.

## QUARTERLY DIGEST.

- (i.) **P. D.**—*Life Insurance—Presumption of Death—Practice.*—The Court being moved for leave to swear the death of a person, part of whose estate consisted of a policy of insurance on his own life; *held*, that the insurance company must have notice of the application, which was granted subject to such notice being given, and to no opposition ensuing thereon.—*In the Goods of Barber*, 56 L.T. 894.
- (ii.) **P. D.**—*Personalty Abroad—Amendment of Grant in Usual Form.*—A grant of letters of administration made in the usual form, amended so as to shew the amount of Italian personal estate, the Italian Court having refused to allow such estate to be dealt with without such alteration. *In the Goods of Henley*, 56 L.T. 895.
- (iii.) **Ch. D.**—*Right of Retainer—Debt due to Executor as Trustee.*—An executor is bound to retain for debts due to him as trustee for others from the estate of his testator, if he is required to do so by his *cestui-que-trusts*.—*Hardwick v. Sutton*, 57 L.T. 14.

### Attachment:—

- (iv.) **Ch. D.**—*Defaulting Trustee—Debtors Act, 1869, s. 4 (3).*—The special remedy of attachment in respect of default in payment by a trustee is only a remedy as between trustee and *cestui-que-trust*, and is not a remedy for a mere creditor where the person against whom the remedy is sought to be asserted is not a trustee for such creditor.—*London and County Bank v. Firmin*, 57 L.T. 45.
- (v.) **Ch. D.**—*Solicitor—Bankruptcy—Debtor's Act, 1869, s. 4, sub-s. 4—Bankruptcy Act, 1883, ss. 9, 10.*—The jurisdiction to attach a solicitor for non-payment of money which he is ordered to pay is not civil only, but also punitive and criminal, and is not interfered with by bankruptcy proceedings against the solicitor. But where it appeared that the creditor would gain nothing by an attachment, the Court, in its discretion, refused to issue attachment, and ordered the solicitor to pay the costs of the attachment.—*Re Aaron Wray*, 56 L.J. Ch. 737; 57 L.T. 47.

### Bankruptcy:—

- (vi.) **C. A.**—*Adjudication after Composition—Mistaken Estimate—Discretion of Court—Bankruptcy Act, 1883, s. 18, sub-s. 11.*—A debtor may be adjudicated a bankrupt at the discretion of the Court, after the acceptance of a composition scheme, whereby property was surrendered for the benefit of his creditors; it having appeared that a mistaken estimate was formed of the value of the property surrendered, and that an increased dividend would be likely to result from an adjudication.—*E. p. Moon*; *in re Moon*, 56 L.J. Q.B. 496; 35 W.R. 743.
- (vii.) **C. A.**—*Application for Receiving Order—Judgment Debt—Power of Court to Inquire into Consideration—Bankruptcy Act, 1883, ss. 4 (1), 9.*—On a petition by a judgment creditor for a receiving order, the Court may go behind the judgment; but it will not do so on the mere suggestion of the debtor that the judgment debt is bad, if it considers that the objections raised are frivolous.—*E. p. Beyfus*; *in re Saville*, 35 W.R. 791.
- (viii.) **Q. B. D.**—*Interpleader—Completion of Execution—Bankruptcy Act, 1883, s. 45, sub-ss. 1, 2; s. 46, sub-s. 2.*—Goods of the debtor were taken in execution under a judgment for a sum exceeding £20. The goods having been claimed by a third person, an interpleader order was

made, in accordance with which the sheriff sold the goods and paid the proceeds into Court. The claimant withdrew his claim, and the sheriff received notice of a bankruptcy petition against the debtor within fourteen days of the sale. *Held*, that the trustee in bankruptcy was entitled to the money in Court.—*Heathcote v. Livesley*, L.R. 19 Q.B.D. 285.

- (i.) **Q. B. D.**—*Practice—Viva Voce Evidence—County Court.*—The rule that leave to use *viva voce* evidence on hearing of a bankruptcy motion must be obtained beforehand, and not at the time when the motion comes on for hearing, does not apply to a County Court.—*E. p. Watkins; re Wilson*, 57 L.T. 201.
- (ii.) **C. A.**—*Practice—Creditor's Petition—Death of Debtor before Service—Bankruptcy Act, 1883, s. 108.*—Where a debtor dies after a creditor's petition has been presented, but before service of the petition, all further proceedings must be stayed.—*E. p. Hill and Hyman; in re Easy*, 35 W.R. 819.
- (iii.) **C. A.**—*Voluntary Settlement—Estate of Person Dying Insolvent—Bankruptcy Act, 1883, ss. 47, 125.*—Decision of Q. B. D. (see Vol. 12, p. 56, vi.), affirmed.—*E. p. Official Receiver; in re Gould*, L.R. 19 Q.B.D. 92; 56 L.T. 806.

#### **Bastardy Order :—**

- (iv.) **Q. B. D.**—*Dismissal of Application—Res Judicata—7 & 8 Vict., c. 101, s. 2.*—The mother of a bastard, whose application at petty sessions against the putative father has been dismissed, may within twelve months from the birth of the child renew the application any number of times; and the dismissal on the merits of an application is no bar to the jurisdiction of the justices to entertain a fresh application.—*Reg. v. Hall*, 57 L.T. 306.

**Bill of Exchange.**—See Principal and Agent, p. 18, vi. Principal and Surety, p. 19, i.

#### **Bill of Sale :—**

- (v.) **Ch. D.**—*Debenture of Company—Memorandum of Agreement—Bills of Sale Act, 1882, s. 17.*—A memorandum of agreement given by a company as security for a loan, agreeing to repay the sum advanced with interest, and, as security, charging all the undertaking, property, estate, and effects of the company, and containing clauses of the kind usual in debentures, is a debenture, and exempt from registration as a bill of sale.—*Edmonds v. Blaina Furnaces Co.; Beesley v. Blaina Furnaces Co.*, 56 L.J. Ch. 815; 57 L.T. 139; 35 W.R. 798.
- (vi.) **Q. B. D.**—*Registration—Local Registration—Bills of Sale Act, 1878, s. 10, sub-s. 2—Bills of Sale Act, 1882, s. 11.*—The omission of the Registrar of bills of sale to transmit an abstract of a registered bill of sale to the Registrar of the County Court, within the district of which the chattels comprised in the bill are situated, does not avoid the bill.—*Trinder v. Raynor*, 56 L.J. Q.B. 422.
- (vii.) **Q. B. D.**—*Seizure—Removal within Five Days—Consent of Grantor—Rights of Landlord—Bills of Sale Act, 1882, s. 13.*—Where the grantee of a bill of sale has, with the consent of the grantor, removed chattels before the expiration of five days from seizure, he is not liable to the landlord for loss of rent thereby caused.—*Lane v. Tyler*, 56 L.J. Q.B. 461.

- (i.) **Q. B. D.**—*Specific Description of Chattels—Sufficiency—Bills of Sale Act (1878) Amendment Act, 1882, s. 4.*—The description of chattels in a bill of sale as "four hundred oil paintings in gilt frames, three hundred oil paintings unframed, twenty water colours unframed, and twenty gilt frames" is not "specific," and the bill of sale is void in respect of such chattels.—*Witt v. Banner*, L.R. 19 Q.B.D. 276; 56 L.J. Q.B. 550; 57 L.T. 807; 35 W.R. 781.
- (ii.) **C. A.**—*Statutory Form—Deviation—Bills of Sale (1878) Amendment Act, 1882, s. 9.*—A covenant in a bill of sale that the grantor would pay all interest on any mortgage of the premises on which the goods assigned might be, and provisions for the possession by the grantee after the payment of the sum secured of the bill of sale, and any documents relating to the sum secured, are deviations from the statutory form, and render the bill of sale void.—*Watson v. Strickland*, L.R. 19 Q.B.D. 391; 35 W.R. 769.

### Bridge:—

- (iii.) **Q. B. D.**—*County—Repairs—Liability—User—Adoption.*—To render a county liable for the repair of a bridge built by an individual and used by the public, mere utility to and use by the public are not conclusive, but it is not necessary to prove any overt act of adoption by the county. It is for the jury to say whether the circumstances shew a dedication to, and adoption by, the county.—*Reg. v. Southampton*, 56 L.J. M.C. 112; 57 L.T. 261.

### Building Society:—

- (iv.) **Ch. D.**—*No Power of Borrowing—Liabilities Discharged with Borrowed Money—Rights of Officers.*—Where the officers of a building society, having no power to borrow, had borrowed money with the assent of the members, and thereout discharged liabilities of the society, held, that they were entitled to stand in the place of the persons to whom such payments had been made, and to claim against the society for the amount of such payments.—*Owen v. Roberts*, 57 L.T. 81.

### Canal Company:—

- (v.) **Ch. D.**—*Percolation of Water—Negligence—Damages—Injunction.*—A canal company having compulsory powers of purchase, suffered water to percolate from their canal and damage plaintiff's premises. The percolation was caused by subsidence owing to the working of a mine under the canal, and could not have been foreseen or prevented by the company by reasonable means, or at a reasonable cost. Held, that the plaintiff was entitled to damages, but not to an injunction to restrain the company from allowing the percolation.—*Evan v. M. S. & L. Ry.*, 57 L.T. 194.

### Colonial Law:—

- (vi.) **P. C.**—*Railway Rates—Meaning of Word "Colonial."*—"Colonial" wine, in the table of railway rates of a colony, means wine of any colony.—*Commissioners for Railways v. Hyland*, 56 L.T. 896.
- (vii.) **P. C.**—*Undisclosed Trust—Transfer by Trustee—Law of Quebec.*—There is no principle in the law of Quebec which forbids property to be placed in the name of a person with a notice that his power over it should be restricted. The transferee of shares having notice that the transferor held them on an undisclosed trust, not having enquired whether the transfer was consistent with the trust, cannot hold them against the *cestui-que-trust*.—*Bank of Montreal v. Sweeney*, 56 L.T. 897.

**Company:—**

- (i.) **C. A.—Borrowings ultra vires—Subrogation of Lender to Rights of Creditors paid out of Advances.**—The equitable doctrine by which the lender of money borrowed by a company, *ultra vires*, is subrogated to the rights of creditors paid off out of the money advanced, is not confined to the amount of debts existing at the time of the advances, but extends to debts accruing subsequently to and paid out of such advances.—*Baroness Wenlock v. River Dee Co.*, L.R. 19 Q.B.D. 155; 35 W.R. 822.
- (ii.) **Q. B. D.—Debentures—Execution Creditor—Interpleader—Bills of Sale Act, 1882, s. 17.**—A company issued debenture bonds payable to bearer, each of which consisted of a statement that the company would pay £100 on a certain day, and that the payment was secured by a mortgage made to trustees for the debenture holders. Neither the bonds nor the mortgage was registered under the Bills of Sale Act. Held, that the debenture holders were not entitled to defeat the claim of an execution creditor to the goods of the company.—*Jenkinson v. Brandley Mining Co.*, 35 W.R. 834.
- (iii.) **C. A.—Distribution of Assets—Partly Paid-up Shares.—Decision of Ch. D. (see Vol. 12, p. 59, iv.), affirmed.**—*Sheppard v. Scinde, &c., Railway*, 56 L.J. Ch. 866.
- (iv.) **Ch. D.—Prospectus—Misrepresentation—Reference to Reports.**—Where a prospectus contained false statements based on a report made to the vendor to the company, which was appended to the prospectus, the truth of which statements the promoters did not guarantee, the application of a shareholder to be removed from the register was refused.—*E. p. Vickers; re British Burmah Lead Co.*, 56 L.T. 814.
- (v.) **H. L.—Purchase of its Own Shares—Companies Act, 1862, ss. 8, 12, 26—Companies Act, 1867, ss. 9-20—Companies Act, 1877, ss. 3, 4.**—A company formed with the object (as stated in the memorandum) of acquiring and carrying on a manufacturing business, cannot, though authorised to do so by the articles of association, purchase its own shares.—*Trevor v. Whitworth*, L.R. 12 App. Cas. 409.
- (vi.) **Ch. D.—Shares—Blank Transfer—Title to Certificate—Estoppel.**—The executors of a deceased owner of shares in an American railway, with a view of being registered as owners of the shares, signed a blank transfer, which they entrusted, with the certificate, to their broker to procure registration. The broker fraudulently deposited the certificate with his bankers as security for an advance. Held, that the bankers were entitled to a charge on the shares, and that the executors were estopped from denying the authority of the broker to deal with them.—*Williams v. Colonial Bank; Williams v. London Chartered Bank of Australia*, 57 L.T. 188.
- (vii.) **Ch. D.—Share Certificates—Blank Transfer—Holder for Value—Estoppel.**—Where a company issues share certificates with a form of transfer on the back, and such transfer has been duly signed in blank by the registered holder, each prior holder of such certificate confers on the bona fide holder for value of the certificate for the time being, an authority to fill in the name of the transferee, and is estopped from denying such authority, and to this extent but no further is estopped from denying the title of such holder. By delivery of such certificate an inchoate legal title passes, but a title by unregistered transfer is not equivalent to the legal estate in or to the complete dominion over the shares.—*Colonial Bank v. Hepworth*, L.R. 36 Ch. D. 36; 57 L.T. 148.

- (i.) **Ch. D.**—*Ultra Vires*—*Subscriptions to Public Institution*.—It is *ultra vires* the shareholders of a railway company to authorise the directors to subscribe, out of the funds of the company, to a public institution, though the institution, when established, would probably cause an increase of traffic receipts.—*Tomkinson v. S. E. R.*, L.R. 35 Ch. D. 675; 56 L.T. 812; 35 W.R. 758.
- (ii.) **C. A.**—*Winding-up*—*Sale of Assets*—*Sanction of Court*—*Discretion*—*Appeal*.—The Court may sanction the sale of the assets of a company, without first obtaining a valuation, if satisfied, in its judicial discretion, that the proposed sale is advantageous to the creditors. Such discretion will not be interfered with by the Court of Appeal, unless it has been exercised on wrong principles, or unless some great loss has been occasioned by a clearly erroneous exercise of discretion.—*Re Oriental Bank Corporation*, 56 L.T. 868.
- (iii.) **C. A.**—*Winding-up*—*Distress for Rent Due after Winding-up Order*—*Mortgage with Attornment Clause*—*Companies Act, 1862, ss. 87, 163*.—A landlord applying for leave to distrain for rent due after the commencement of a winding-up must shew special circumstances which would make it inequitable to enforce section 163 against him, or he must shew that the rent has accrued under such circumstances that it ought to be paid as part of the cost of the winding-up. *Semble*: a mortgagee with an attornment clause is in a less favourable position than a landlord. Where the liquidator of a company kept possession of the premises, in order to sell them as a going concern, with the acquiescence of mortgagees of the premises, not carrying on the business, but keeping the premises and machinery therein in repair, the mortgagees were not allowed to distrain under an attornment clause in the mortgage deed, the possession of the liquidator being for their benefit as well as that of the company.—*In re Lancashire Cotton Spinning Co.*; *e. p. Carnelley*, L.R. 35 Ch. D. 656; 56 L.J. Ch. 761.

#### Contract:—

- (iv.) **C. A.**—*Consideration*—*Forbearance to Sue*.—The defendant made a promissory note for the amount of the debt of another in order to induce the plaintiff not to sue for the debt. The plaintiff having forbore to sue for several years; *held*, that there was good consideration for the note, although there was no contract by the plaintiff not to sue.—*Crears v. Hunter*, L.R. 19 Q.B.D. 341; 56 L.J. Q.B. 518; 35 W.R. 821.
- (v.) **Ch. D.**—*Statute of Frauds, s. 4*—*Parol Agreement to Grant Easement*—*Part Performance*.—The doctrine of part performance applies to a parol agreement to grant an easement, though no interest in land is intended to be acquired.—*McManus v. Cooke*, L.R. 35 Ch. D. 681; 56 L.J. Ch. 662; 56 L.T. 900; 35 W.R. 754.
- See Partnership, p. 14, vi.*

#### Copyright:—

- (vi.) **H. L.**—*Lectures*.—A university professor who delivers to the students lectures, which are his own literary publication, does not communicate them to the whole world, so as to lose his right to restrain their publication by another.—*Caird v. Sime*, L.R. 12 App. Cas. 526.

#### Coroner:—

- (vii.) **C. B. D.**—*Jurisdiction*—*County Prison*—*Inquest on Prisoner*—*County Coroner*—*Prison Acts, 1865 & 1877*—*Municipal Corporations Act, 1882, s. 171, sub-s. 1, s. 228, sub-s. 4*.—A prison which was a county prison at the commencement of the Prison Act, 1865, and as to which no rules



have been made under section 30 of that Act, is still the county prison, though situate within the limits of a city, and therefore the jurisdiction to hold inquests on prisoners dying in such prison is in the county coroner. — *Reg. v. Robinson*, L.R. 19 Q.B.D. 322; 57 L.T. 275; 35 W.R. 843.

**Costs :—**

- (i.) **Ch. D.**—*Administration Action—Inquiry as to Heir—Summons to vary Certificate—Costs of Unsuccessful Claimant.*—There is no rule which entitles a claimant coming in on an enquiry in chambers, and failing, to have his costs out of the estate. He may be ordered to pay costs.—*Knight v. Gardner*, 57 L.T. 238.
- (ii.) **Ch. D.**—*Appointment of New Trustees—Costs of Old Trustees—Costs of Donee of Power.*—New trustees are bound to pay the costs, properly incurred, of the old trustees. They are also entitled to the costs of examining the state of the trust property, and the validity of the power, and to the costs of the donee paid by them.—*Harvey v. Olliver*, 57 L.T. 239.
- (iii.) **Ch. D.**—*Separate Counsel—Discretion of Taxing Master.*—It is not a matter solely within the discretion of the taxing master to decide whether the cases of two defendants are sufficiently distinct to allow of their appearance by separate counsel.—*Ager v. Blacklock*, 56 L.T. 890.
- (iv.) **C. A.**—*Unsuccessful Appeal—Fund in Court.*—The costs of an unsuccessful appeal ought not to come out of a fund in Court, except under special circumstances, but should be borne by the unsuccessful appellant.—*Barton v. Spencer ; re Barlow*, 35 W.R. 737.
- (v.) **Ch. D.**—*Taxation—Summons to vary Taxing Master's Certificate—R.S.C., Ord. lxv., rr. 37, 39, 41.*—Where a taxing master has certified that a complete settlement of accounts has taken place between the client, it is not necessary on a summons to vary his certificate to carry in any objections to his decision, as there has been no actual taxation at all.—*Re George Castle*, 56 L.J. Ch. 753; 57 L.T. 76.

See *Railway Company*, p. 19, iii.

**Criminal Law :—**

- (vi.) **Q. B. D.**—*Malicious Injuries to Property Act, 1861, s. 52—Real Property—Mushrooms.*—Gathering mushrooms, growing wild and uncultivated, without doing any damage to the grass or fences of the field where they grow, does not constitute the offence of wilfully or maliciously committing damage, injury, or spoil to or upon real property.—*Gardner v. Mansbridge*, L.R. 19 Q.B.D. 217; 57 L.T. 265; 35 W.R. 809.

**Customs Annuity Fund :—**

- (vii.) **Ch. D.**—*56 Geo. III., clxxiii., s. 9—Nature of Subscriber's Interest—Nominee—Nomination as Trustee—Lunatic Subscriber.*—The interest of a subscriber to the Customs' Annuity and Benevolent Fund in an insurance effected on his own life is not of the nature of property, but he has a limited power of appointment among the objects defined by the rules, i.e., his relatives, and his nominees as prescribed by the rules. A Court of Lunacy cannot appoint a nominee on behalf of a lunatic subscriber. A nominee cannot be appointed as a trustee for others.—*Urquhart v. Butterfield*, L.R. 36 Ch. D. 55.



**Deed :—**

- (i.) **Ch. D.**—*Construction — Inconsistency — Recitals — Operative Part — General Words.*—A settlement recited that the lands intended to be dealt with were subject to a certain charge. The operative part referred to a schedule which described lands in Durham subject to the charge. The operative part contained general words referring to all other lands of the settlor in Durham. The settlor had other lands in Durham subject to other charges. *Held*, that only the lands subject to the charge mentioned in the recital passed by the deed.—*Earl Grey v. Earl of Durham*, 57 L.T. 164.

**Dentist :—**

- (ii.) **C. A.**—*Register — Withdrawal of Diploma — Erasure from Register — Dentists' Act, 1878.*—When a person has been registered as a licentiate of a medical authority, the withdrawal of his diploma by such authority does not render him liable to be erased from the register.—*E. p. Partridge*, L.R. 19 Q.B.D. 467.

**Ecclesiastical Law :—**

- (iii.) **Q. B. D.**—*Suspension — Contempt — Imprisonment after Expiration of Suspension — Church Discipline Act, 1840.*—After the period named in an order for the suspension of a clerk has expired he cannot be imprisoned under a writ *de contumace capiendo* for contempt of the order.—*E. p. Rev. James Bell Cox*, L.R. 19 Q.B.D. 307 ; 56 L.J. Q.B. 532

**Election (Local Board) :—**

- (iv.) **Q. B. D.**—*Fabricating or Altering Voting Paper — Falsely Assuming to act for Voter — Public Health Act, 1875, Sched. II., r. 69.*—A candidate in a local board election who called on a voter, and in the presence of, but without any request from, the voter, wrote the voter's initials opposite his own name on the voting paper ; *held*, not to have fabricated a voting paper in whole or in part, or to have falsely assumed to act in the name or on behalf of the voter.—*Gough v. Murdock ; in re Knighton Election*, 57 L.T. 308 ; 35 W.R. 836.

**Fire Insurance :—**

- (v.) **Ch. D.**—*Guarantee Business — Treaty Business — Ultra Vires — Policy.*—Treaties entered into by a fire insurance company with other companies appointing them agents abroad, and agreeing to share a portion of the risk of every insurance policy of such other companies, are not *ultra vires*, where the company has power to give or take policies by way of guarantee. Any contract of insurance comes within the word "policy."—*Re Norwich Equitable Fire Assurance Society*, 57 L.T. 241.

**Foreign Judgment :—**

- (vi.) **Ch. D.**—*Cause of Action — Liability to Avoidance.*—A judgment of a foreign Court which imposes a liability to pay a sum of money is a good cause of action in England, though it may be liable to be avoided by subsequent proceedings in the foreign Court.—*Norton v. Freeman ; re Henderson*, L.R. 35 Ch. D. 704 ; 56 L.T. 822.

**Foreign Land :—**

- (vii.) **Ch. D.**—*Condition of Holding — Liability to Perform.*—Decision of Ch. D. (1884, Vol. 12, p. 82, iii.) affirmed.—*Bathurst v. Walford*, 57 L.T. 206 ; 35 W.R. 814.

**Gas Company:—**

- (i.) **Ch. D.—Assigned District—Point of Supply—Metropolis Gas Act, 1860, s. 6.**—A metropolitan gas company may supply gas for consumption outside its district, provided that the meter from which the gas passes into the pipes for consumption is within its district.—*Gas Light & Coke Co. v. South Metropolitan Gas Co.*, 56 L.J. Ch. 858.
- (ii.) **Q. B. D.—Inquiry into State of Concern—Power to Reopen Accounts of Past Years—Costs of Inquiry—Gasworks Clauses Act, 1847.**—On an inquiry into the state of a gas company with a view to the reduction of the price of gas, the accounts of past years may be examined to ascertain the actual state of the concern, but may not be re-cast so as to vary the accounts of the year into which the inquiry is made. A reduction of price cannot be ordered on the ground that the past accounts shew that sufficient had been earned to pay the maximum dividend, and keep the reserve fund invested, such dividend not having been paid or the reserve fund invested. The costs of the persons petitioning for inquiry cannot be ordered to be paid by the company.—*Reg. v. Recorder of Hanley*, L.R. 19 Q.B.D. 481.

**Goodwill:—**

- (iii.) **Ch. D.—Sale of—Right to use Old Name.**—A vendor who had carried on a business under the name of A, sold the goodwill, together with the exclusive right to use the name of "A & Co." Held, that the purchaser could not trade under the name of "A," as that might cause persons to believe that the vendor still carried on the business, and so involve him in liability.—*Chatteris v. Isaacson*, 57 L.T. 177.

**Husband and Wife:—**

- (iv.) **P. D.—Desertion—Order for Restitution of Conjugal Rights—Failure to Obey.**—A husband having shown by his conduct that he had no intention of obeying an order for restitution of conjugal rights; held, to have deserted his wife.—*Harding v. Harding*, 56 L.T. 919.
- (v.) **Q. B. D.—Desertion—Refusal to Maintain—Residence of Wife—Married Women (Maintenance in Case of Desertion) Act, 1886.**—A married woman whose husband has deserted and refused to maintain her may obtain an order for maintenance from any magistrate within whose jurisdiction she resides at the time of desertion or refusal, whichever event last occurred. The Court refused to make a rule to bring up and quash an order which did not state the place of the offence, it being admitted that the wife's residence was within the jurisdiction.—*Reg. v. Leresche*, 85 W.R. 805.
- (vi.) **P. D.—Desertion—Deed of Separation—Judicial Separation.**—A deed of separation executed after a husband had left his wife, containing no covenant not to sue, and no agreement to condone past offences, is not a bar to a claim by the wife for a judicial separation on the ground of adultery.—*Moore v. Moore*, L.R. 12 P.D. 193.
- (vii.) **H. L.—Divorce Bill—Substituted Service—Allowance to Wife.**—Where on a divorce bill substituted service was allowed on the ground that the respondent's address was concealed, the House ordered service on her solicitor, her parents, and the person with whom she appeared to be residing. Where the wife appears to have no means to defend herself, the House will order her husband to pay her a small sum for her defence.—*A.'s Divorce Bill*, L.R. 12 App. Cas. 364.

- (i.) **H. L.**—*Divorce Bill—Practice—Substituted Service—Cruelty.*—An application for substituted service of a divorce bill on the ground that the respondent's address was unknown to the petitioner, will be refused as premature, if the respondent had been heard of within the last three months. Acts which would if done in England be held by the High Court to constitute legal cruelty, will also be held to constitute legal cruelty in a divorce bill.—*Gifford's Divorce Bill*, L.R. 12 App. Cas. 361.
- (ii.) **H. L.**—*Divorce Bill—Bastardising Clause.*—A paragraph in a divorce bill containing allegations tending to bastardise a child born in wedlock, there having been access at the natural period of conception, will be struck out.—*Hewat's Divorce Bill*, L.R. 12 App. Cas. 312.
- (iii.) **P. D.**—*Divorce—Guardianship of Infants Act, 1886—Postponement of Decree Absolute.*—A decree nisi having been made in favour of the wife, and the custody of the children having been given to her, she moved for a declaration that the husband was "a person unfit to have the custody" of the children. *Held*, that the making of the decree absolute ought to be postponed to allow the wife to file affidavits in support of her application.—*Robinson v. Robinson*, 57 L.T. 118.
- (iv.) **P. D.**—*Domicile—Divorce—Cape Law—Second Marriage.*—It will be readily presumed that parties divorced by a Colonial Court had obtained the Colonial domicile necessary to make the divorce effectual. Although by the law of Cape Colony the guilty divorced party cannot marry again while the innocent party is single, he may contract a marriage after leaving that colony and acquiring a new domicile.—*Scott v. Attorney-General*, 56 L.T. 924.
- (v.) **P. D.**—*Domicile—Marriage and Divorce in Foreign Country—Status of Parties.*—An Austrian subject, domiciled in Austria, and a Roman Catholic by religion, married in Germany a lady of the same domicile. The marriage was, by the law of Austria, indissoluble. The parties were divorced in Germany. *Held*, that the divorce was effectual.—*Ingham v. Sachs*, 56 L.T. 920.
- (vi.) **Q. B. D.**—*Necessaries—Adultery—Connivance.*—A husband is liable for necessities supplied to his wife at whose adultery he has connived.—*Wilson v. Glossop*, L.R. 19 Q.B.D. 379; 56 L.J. Q.B. 434.

### Income Tax:—

- (vii.) **Q. B. D.**—*Hospital—Charitable Institution—Payment by Patients—Excess of Receipts—Income Tax Act, 1842, ss. 88, sub-s. 3, 100, 105—Income Tax Act, 1853, s. 2, Sched. D.*—A hospital which, by payments made by wealthier patients, the poorer patients being treated free, has received a surplus over its ordinary expenses, which surplus has been expended in improving and extending the hospital, is assessable to income tax on such profits.—*St. Andrew's Hospital, Northampton v. Shearsmith*, 35 W.R. 811.
- (viii.) **Q. B. D.**—*Tithe Rent Charge—Annual Value—Deductions—Income Tax Acts, 1842, s. 52, Sched. A, No. 1; 1853, s. 2, Sched. A.*—For the purpose of assessment to income or property tax the owner of a commutation tithe rent charge is entitled to deduct from the amount the costs incurred in the collection thereof.—*Stevens v. Bishop*, L.R. 19 Q.B.D. 442; 56 L.J. Q.B. 454; 35 W.R. 839.
- (ix.) **Q. B. D.**—*Business carried on Abroad—Partner residing in England—Profits not remitted to England—Income Tax Acts, 1842, ss. 100, 106, 108; 1853, s. 2, Sched. D.*—A partner residing in England in

a firm carrying on business in Australia is liable to income tax on the whole of his share in the profits of the business, whether such share of profits is remitted to him in England or not.—*Colquhoun v. Brooks*, L.R. 19 Q.B.D. 400.

**Infant :—**

- (i.) **Ch. D.**—*Custody—Religious Education—Paternal Right—Infants Custody Act, 1873, s. 2.*—The father of the child was a Roman Catholic, the mother a Protestant. A separation deed had been executed giving the mother the absolute custody and control of the child. The father had no means to maintain the child, and had not seen it for three years and a half. In an action to administer the trusts of separation deed the mother had undertaken not to bring up the child in manner at variance with the Roman Catholic religion. *Held*, on motion made by the mother, that she ought to have exclusive control of the education (religious or otherwise).—*Condon v. Vollum*, 57 L.T. 154.
- (ii.) **Q. B. D.**—*Necessaries—What are—Admissibility of Evidence.*—When an infant is sued for the price of goods supplied to him on credit, evidence is admissible to shew that, at the time of ordering the goods, he was already sufficiently supplied with goods of a similar character.—*Johnstone v. Marks*, 35 W.R. 806.

**Injunction :—**

- (iii.) **C. A.**—*Imitation of Plaintiff's Goods—Form of Account.*—The defendants brought out their goods in a form so closely resembling those of the plaintiff as to deceive the public, though not retail dealers. *Held*, that the plaintiffs were entitled to an injunction and to an account of profits; which account ought not to be limited by excluding goods sold by retail dealers to persons who bought them as the defendant's goods.—*Lever v. Goodwin*, L.R. 36 Ch. D. 1.

**Joint Ownership :—**

- (iv.) **Ch. D.**—*Survivorship—Legal and Beneficial Interest—Disclaimer—Resulting Trust—Indemnity.*—By agreement between H. and R. shares, the property of H. but standing in the names of H. and R. were to be held on trust for H. for life, remainder for R. for life, remainder for H.'s appointees. H. and R. having died calls were made on the shares. H.'s appointees having disclaimed, *held*, that there was a resulting trust for H. and that his estate must indemnify that of R.—*Hobbs v. Wayet*, 57 L.T. 225.

**Land Clauses Act :—**

- (v.) **Q. B. D.**—*Premises Injuriouly Affected—Change of Premises—Compensation.*—A person whose premises are injuriouly affected by the works of a railway company, and consequently determines the lease of his premises, and moves to new premises, can recover compensation for the expense and damage caused by such removal.—*Reg. v. Poulter*, 56 L.J. Q.B. 581.

**Lease :—**

- (vi.) **Ch. D.**—*Breach of Covenant—Re-entry—Under-lessee of Part of Property—Conveyancing Act, 1881, s. 14.*—The under-lessee of part of the property comprised in a lease is still liable to re-entry and forfeiture by the original lessor in consequence of breach of covenants in the original lease affecting the other part of the property comprised therein.—*Creswell v. Davidson*, 56 L.T. 811.

**Legacy:—**

- (i.) **Ch. D.**—*Shares in Company—Distringas—Acceptance.*—Service of a distringas as to shares comprised in a legacy is not an acceptance of the legacy, so as to bring the legatee under the liabilities attaching to the shares, or estop him from disclaiming the legacy.—*Hobbs v. Wayet*, 56 L.J. Ch. 819, 57 L.T. 225.

**Legitimacy:—**

- (ii.) **P. D.**—*Paternity of Child born in Wedlock—Presumption.*—The presumption in favour of the legitimacy of a child born in wedlock may be rebutted by evidence, which must be clear and conclusive, and not resting merely on a balance of probabilities. A jury may find against the legitimacy of a child born 276 days after the last opportunity of intercourse between the husband and wife, where there was evidence of conduct of the wife shewing that she regarded the child as the offspring of her paramour.—*Bosville v. A.-G.*, L.R. 12 P.D. 177; 57 L.T. 88.

**Light and Air:—**See Act of Parliament, p. 1, i.

**Life Assurance Company:—**

- (iii.) **Ch. D.**—*Transfer of Business—Confirmation by Court—Notice to Policy Holders—Life Assurance Companies' Act, 1870, s. 14.*—When a petition is presented by a life assurance company for the confirmation by the Court of an agreement for the transfer of its business, the notices required to be given to policy holders must be given before the hearing of the petition, and the Court will not make an order subject to the production to the registrar of consents from the policy holders to whom notice has not been given.—*In re Briton Life Association*, 35 W.R. 803.

**Local Government:—**

- (iv.) **Q. B. D.**—*Joint Board—Component Districts—Apportionment of Contributions—"Special Expenses"—Public Health Act, 1875, ss. 229, 230, 283, 284.*—Where expenses incurred by the joint board of a district are to be paid out of a fund to be contributed by the component districts in manner provided by the Public Health Act, 1875, s. 283, and the contributions of certain districts are to be contributed and raised as if they were "special expenses;" held, that the contributions of the districts must be apportioned according to the rateable values of the properties in the districts, ascertained by the valuation lists, and that the value of tithes, tithe rent-charge, arable land, meadows, pasture grounds, woodlands, market, or nursery gardens, land covered with water, canals, towing-paths, and railways, must be taken at the full value in the valuation list, and not at one-fourth thereof.—*Darenth Sewerage Board v. Guardians of Dartford*, L.R. 19 Q.B.D. 270; 57 L.T. 293.
- (v.) **Q. B. D.**—*New Street—Approval by Authority—Part of Street—38 & 39 Vict., c. 55, s. 150—48 & 49 Vict., c. clxxxiii., s. 37.*—A local Act provided that it should not be lawful, without the consent of the local authority, to build any houses abutting on a new street or part of a new street, until the street or part of a street had been approved of by the authority in respect of level and width, and until the same had been constructed and sewered to the satisfaction of the authority. Held, that the authority could prohibit the building of any houses abutting on part of a new street, the level and width of which had been approved of, until the whole of the street had been constructed and sewered.—*Widdall v. Mayor, &c., of Sunderland*, 57 L.T. 308.

**Lunacy.**—See Practice, p. 17, iv.

**Married Woman :—**

- (i.) **Q. B. D.**—*Capacity to Contract—Separate Estate—Married Women's Property Act, 1882, s. 1, sub-ss. 2, 3, 4.*—In an action of contract against a married woman it must be shewn that she had separate estate at the time of the contract. — *Palliser v. Gurney*, 56 L.J. Q.B. 546; 35 W.R. 760.
- (ii.) **C. A.**—*Practice—Restraint on Anticipation—Service on Trustees—Conveyancing Act, 1881, s. 39.*—On an application by a married woman for liberty to bind her life estate by way of mortgage, notwithstanding a restraint on anticipation, the trustees of the settlement need not be served.—*Re Little*, 57 L.J. Ch. 872.

**Master and Servant :—**

- (iii.) **C. A.**—*Appointment of Receiver by Court—Voluntary Liquidator—Notice of Discharge.*—Decision of Q. B. D. (see Vol. 12, p. 67, iii.) affirmed.—*Reid v. Explosives Co.*, L.R. 19 Q.B.D. 264.
- (iv.) **Q. B. D.**—*Mines—Wages—Weight—Deductions—Illegality—Coal Mines Regulation Act, 1872, s. 17.*—Deduction from wages paid according to the weight of minerals gotten are illegal, unless determined according to the mode provided by statute, though the mode actually used was agreed to by the men.—*Bourne v. Netherseal Colliery*, L.R. 19 Q.B.D. 357; 35 W.R. 837.
- (v.) **Q. B. D.**—*Breach of Statutory Duty—Volenti non fit injuria—Employers' Liability Act, 1880, s. 1, sub-s. 2—Coal Mines Regulation Act, 1872.*—The maxim *volenti non fit injuria* does not apply as between master and servant, when an accident happens to the servant through the breach of a statutory duty on the part of the employer.—*Baddeley v. Earl Granville*, L.R. 19 Q.B.D. 423; 56 L.J. Q.B. 501; 57 L.T. 268.

**Metropolitan Government :—**

- (vi.) **Q. B. D.**—*Vestry—Pension of Officer—Discretion as to Amount—29 Vict., c. 81, ss. 1, 4.*—A metropolitan vestry has a discretion either to grant or refuse a pension to an officer of the vestry, but has no discretion as to the amount (if granted), which is fixed by the statutory scale.—*Reg. v. Vestry of St. George's, Southwark*, 35 W.R. 841.
- (vii.) **Q. B. D.**—*New Street in Two Districts—Order for Management by One—Paving Expenses—18 & 19 Vict., c. 120, ss. 105, 140—25 & 26 Vict., c. 102, ss. 77, 86.*—An order of the Metropolitan Board of Works, that a new street in more than one parish should be under the exclusive management of one vestry for the purpose of paving, and that the expenses payable by each should be equally divided between the two parishes is valid; but such order does not entitle the managing vestry to require the other vestry to pay one-half of the expenses.—*Vestry of St. Giles, Camberwell v. Board of Works for Greenwich*, L.R. 19 Q.B.D. 502.

**Middlesex Registry :—**

- (viii.) **Q. B. D.**—*Attesting Witness—Execution by Grantor or Grantee—Commissioner to Administer Oath—7 Anne, c. 20, s. 15—15 & 16 Vict., c. 80—16 & 17 Vict., c. 78, s. 2.*—It is not necessary that one of the witnesses attesting the memorial of a deed, registered in Middlesex, shall be a witness to the execution of the deed by the grantor; it is sufficient if he be a witness to the execution by the grantee. A London commissioner to administer oaths in Chancery can administer the oath required for registration; it is sufficient if he follow the practice adopted by the registrar in administering oaths at the registry, and he need not require a written affidavit of the witness.—*Reg. v. Lord Truro*, 35 W.R. 808.



**Mistake :—**

- (i.) **Q. B. D.**—*Payment by—Recovery.*—Harbour dues, paid on articles exempted from such dues, in ignorance of the exemption, may be recovered by the payor.—*Hooper v. Mayor of Exeter*, 56 L.J. Q.B. 457.

**Mortgagee :—**

- (ii.) **Ch. D.**—*Loan on Transfer of Stock—Joint Holders—Re-transfer to Nominee of one.*—One of several trustees obtained from a bank a loan on the security of a transfer of stock, part of the trust fund, which he obtained from his co-trustees on representations of an intention of changing the investments. On payment of the loan the bank, without notice to the original holders, transferred the stock to a nominee of, and purchaser from, the borrowing trustee, who reinvested the proceeds as originally proposed, but in his own name. He afterwards sold the stock and misappropriated the proceeds. He represented the stock as part of the trust funds to his co-trustees, and accounted for the dividends. *Held*, that the loss was originally caused by the improper transfer by the bank to the nominee of one only of the original holders, and that the bank was liable for the loss.—*Magnus v. Queensland National Bank*, L.R. 36 Ch. D. 25; 57 L.T. 136; 35 W.R. 752.
- (iii.) **Ch. D.**—*Realisation—Surplus—Simple Contract Debt—Retainer—Set-off.*—A mortgagee, who has a surplus in his hands after realising his security, may not retain out of it as against other creditors of the mortgagor, the amount of a simple contract debt due to him. A debt arising in the lifetime of the debtor cannot be set off against a sum becoming due to his estate after his death. — *Christison v. Bolam*, 57 L.T. 250.

**Municipal Corporation :—**

- (iv.) **Q. B. D.**—*Election of Alderman—Mayor Elect—Municipal Corporations Act, 1882, s. 60.*—An alderman who has just been elected mayor is an "outgoing alderman," and may not vote in the election of alderman, though he has qualified as mayor by making the required declaration.—*Bridport Election Petition; Hounsell v. Suttill*, L.R. 19 Q.B.D. 498; 56 L.J. Q.B. 502; 57 L.T. 102.

**Partnership :—**

- (v.) **Ch. D.**—*Death of Partner—Provision that Executors should stand in his Place—Rights of Executors and Surviving Partner.*—Partnership articles provided that the partnership should last for a term of years, with a provision that on the death of any partner during the term his executors should succeed to his share, and become partners in his place. *Held*, that the executors of a deceased partner could not be forced to become partners against their will, and that the partnership must be considered as dissolved as from the death of the deceased partner, and be wound up on that footing; but that the surviving partners must have reserved to them the right to prosecute against the estate of the deceased partner any remedy which they might have in respect of any alleged breach of the covenant contained in the articles that the partnership should continue for a certain term.—*Lancaster v. Allsup*, 57 L.T. 53.
- (vi.) **Q. B. D.**—*Liability—Joint Contractor—Unsatisfied Judgment—Res Judicata.*—An unsatisfied judgment against one joint contractor on a bill of exchange, given by him alone for a joint debt, is a bar to an action against the other joint contractor on the original contract.—*Cambefort & Co. v. Chapman*, L.R. 19 Q.B.D. 229; 35 W.R. 838.

**Patent :—**

- (i.) **Ch. D.**—*Amended Particulars of Objection—Patents, Designs, and Trade Marks' Act, 1883, s. 29, sub-s. 5—Costs.*—In granting the defendant in a patent action leave to amend his particulars of objection, the Court, even where the patentee has been aware of the existence of an alleged anticipation before the commencement of the action, will impose such terms on the defendant as will place the plaintiff in the same position as if the amended particulars had been those originally delivered.—*Ehrlich v. Ihlee*, 56 L.T. 819.
- (ii.) **Ch. D.**—*Validity — Variation between Provisional and Complete Specification—Patent Law Amendment Act, 1852, ss. 6, 8, 9.*—The provisional specification need only describe generally and fairly the nature of the invention, and need not enter into the minute details of the complete specification. If the patentee, in the interval between the filing of the provisional and complete specifications, discovers an improvement in the manner of carrying out the invention, he is bound to communicate it to the public by means of the complete specification.—*Moseley v. Victoria Rubber Co.*, 57 L.T. 142.

**Poor Law :—**

- (iii.) **Q. B. D.**—*Action for Costs—Order concerning Pauper Lunatic—Abandonment—16 & 17 Vict., c. 97, s. 117—12 & 13 Vict., c. 45, s. 18.*—An action lies to recover costs which have been taxed by the Clerk of the Peace, and which arise out of an order of Justices made concerning the settlement of a pauper lunatic, and subsequently abandoned on notice of appeal being given.—*Guardians of Dewsbury Union v. Guardians of West Ham Union*, 56 L.J. Q.B. 89.
- (iv.) **Q. B. D.**—*Rating—Exclusive Occupation—Licence in Nature of an Easement—Advertisement Hoardings.*—An agreement for the exclusive use for advertising for a term of years of the side of a shed erected for storing timber, and an agreement for the privilege of taking down a wall and erecting and using a hoarding, the agreement to be in force for a term of years, give an exclusive occupation, which is rateable, and not a licence in the nature of an easement, of the side of the shed, and of the hoarding when erected.—*Taylor & Co. v. Overseers of Pendleton*, L.R. 19 Q.B.D. 288 ; 35 W.R. 762.
- (v.) **C. A.**—*Settlement.*—The word "wife" in the *Divided Parishes' Act, 1876, s. 35*, does not include a widow.—*Croydon Guardians v. Reigate Guardians*, L.R. 19 Q.B.D. 385 ; 56 L.J. M.C. 93 ; 35 W.R. 824.  
See Administration, p. 1, ii.

**Practice :—**

- (vi.) **C. A.**—*Amendment—Claim barred by Statute of Limitations.*—A plaintiff will not be allowed to amend by setting up claims in respect of causes of action which have become barred by the statute of limitations since the issue of the writ.—*Weldon v. Neal*, L.R. 19 Q.B.D. 394.
- (vii.) **C. A.**—*Appeal—Security for Costs—Delay.*—Order for security for costs made though the appeal was in the day's paper, there having been no delay in making the application except a slight delay attributable to the appellant.—*Ellis v. Stewart*, L.R. 35 Ch. D. 459 ; 57 L.T. 30.
- (viii.) **Q. B. D.**—*Appeal from Inferior Court—Action Remitted to County Court—O. lix., rr. 9—17.*—An appeal from the decision of a County Court in an action remitted from the High Court is not a County Court appeal. The course for questioning such a decision is, in accordance with the old practice, to move for a rule nisi for a new trial within four days.—*Hughes v. Finney*, 35 W.R. 807.



- (i.) **Q. B. D.**—*Appeal from Inferior Court—Calculation of Time—O. lix., r. 12.*—When the finding of the jury in a County Court is complained of, the twenty-one days within which an appeal may be entered is to be calculated from the time when the verdict was given, although the judgment upon it was not given till later.—*Rawnsley v. L. & Y. Ry. Co.*, 35 W.R. 770.
- (ii.) **Q. B. D.**—*County Court—Appeal from—Time when there has been a Motion for a New Trial.*—No appeal lies from the decision of a County Court Judge on an application for a new trial; so that the time within which an appeal may be made to the High Court begins to run from the date of the judgment at the trial, not from the date of the Judge's decision on an application for a new trial.—*McHardy v. Liptrott*, L.R. 19 Q.B.D. 151; 56 L.J. Q.B. 459.
- (iii.) **Ch. D.**—*Bill of Review.*—The Court can give leave to bring an action in the nature of a bill of review. If the judgment sought to be reviewed is that of the Court of Appeal, the application for leave should be to the Court of Appeal.—*Falcke v. Scottish Imperial Insurance Co.*, 57 L.T. 39; 35 W.R. 794.
- (iv.) **C. A.**—*Costs—Event—Claim Admitted—Counter-claim—O. lxx., r. 1.*—Plaintiff claimed for rent of premises. Defendant admitted the claim, but counter-claimed for a larger amount as damages in respect of the unsanitary condition of the premises. At the trial the jury found for the defendant on the counter-claim for an amount less than the rent admitted to be due. Held, that the Judge could not, in the absence of good cause, make any order as to costs which would prevent them from following the "event."—*Wight v. Shaw*, L.R. 19 Q.B.D. 396.
- (v.) **Q. B. D.**—*Costs—Arbitration—Two Counsel.*—There is no universal rule that in an arbitration the fee of only one counsel can be allowed.—*Orient Navigation Co. v. Ocean Marine Insurance Co.*, 35 W.R. 771.
- (vi.) **Q. B. D.**—*County Court—Payment into Court with Denial of Liability—County Courts Act, 1846, s. 82—County Court Rules, 1886, O. ix., rr. 11, 12.*—A defendant may pay money into a County Court at the same time denying the plaintiff's cause of action, and such payment is not an admission of liability.—*Harper v. Davis*, L.R. 19 Q.B.D. 170; 56 L.J. Q.B. 444.
- (vii.) **C. A.**—*County Court—Slander—County Courts Act, 1867, s. 10—Judicature Act, 1873, s. 67.*—Decision of Q. B. D. (see Vol. 12, p. 110, x.) affirmed.—*Stokes v. Stokes*, L.R. 19 Q.B.D. 419; 56 L.J. Q.B. 494.
- (viii.) **C. A.**—*Discovery—Privilege—Interrogatories.*—Anonymous letters received by the plaintiff after the commencement of an action must be produced, but anonymous letters received by his solicitor or counsel are privileged. In a suit to recall probate on the ground of undue influence, the defendants being the executors and the universal legatee, it is relevant to ask the executors what payment for services, loan, or gift, they had received from the testator for three years before his death, and whether the legatee had made over to them any part of the estate.—*Young v. Holloway*, L.R. 12 P.D. 167; 56 L.J. P. 81; 35 W.R. 751.
- (ix.) **C. A.**—*Discovery—Inspection of Banking Account—Banker's Books Evidence Act, 1879, s. 7.*—In civil proceedings an order for inspection of the banking account of a party may be made *ex parte*, though as a general rule it would be advisable to serve the party before making the order, and the application need not, in every case, be supported by evidence. The inspection ought to be limited to the period covered by the matters in dispute.—*Arnott v. Hayes*, 56 L.J. Ch. 844; 57 L.T. 299.

- (i.) **Q. B. D.**—*Justices—Special Case—Power to State—Summary Jurisdiction Act, 1879, s. 33—Summary Jurisdiction Rules, 1886, r. 18.*—A court of summary jurisdiction cannot state a special case, unless an application has been made to the Court in writing, and a copy of such application has been left with the Clerk of the Court within seven days from the date of the proceeding to be questioned.—*South Staffordshire Waterworks Co. v. Stone*, L.R. 19 Q.B.D. 168.
- (ii.) **Q. B. D.**—*Mayor's Court—Appeal from—Leave—Mayor's Court Procedure Act, 1857, s. 8—R. S. C., 1883, O. lix., r. 10.*—It is not necessary to get leave from the Judge of the Mayor's Court to move in the High Court to set aside a verdict and judgment in the Mayor's Court on the ground of misdirection, in a case where the sum sought to be recovered exceeds £20.—*Eder v. Levy*, L.R. 19 Q.B.D. 210.
- (iii.) **C. A.**—*Money Paid into Court with Denial of Liability—Order for Payment Out—R. S. C., O. xxii., r. 6 (c.).*—Where money is paid into Court with a defence denying liability, and the plaintiff does not accept it in satisfaction, an order for payment out cannot be made until after determination of the action.—*Maple v. Earl of Shrewsbury*, L.R. 19 Q.B.D. 463; 35 W.R. 819.
- (iv.) **C. A.**—*Payment out—Person in New South Wales of Unsound Mind not so found—Statute of N. S. W., 42 Vict., No. 7, ss. 92, 105.*—A Colonial statute providing that the Master in Lunacy shall collect and administer the property of all insane persons, does not entitle him to claim as of right the payment out of a fund in Court belonging to a person residing in the Colony as an "insane patient" in a hospital for insane persons, who has not been declared of unsound mind by any Judge of the Supreme Court of the Colony. But the Court, or a trustee, may pay to him so much of a fund as is shewn to be necessary for his future or to have been expended on his past maintenance, the Master being a quasi guardian of the lunatic. Payment ordered of part of the fund in Court for past maintenance and of the dividends of the residue.—*Barton v. Spencer; re Barlow*, 56 L.J. Ch. 795; 57 L.T. 95; 35 W.R. 737.
- (v.) **Ch. D.**—*Petition—Vesting Order—Infant Heir—Trustee Act, 1850, s. 7.*—A petition for vesting in beneficiaries lands of which the legal estate had descended to the infant heir of the last surviving trustee ordered to be served on the infant.—*In re Adams's Trusts*, 35 W.R. 770.
- (vi.) **Q. B. D.**—*Receiver—Equitable Execution—Judgment—O. l., r. 15a.*—A judgment debt being unsatisfied for want of goods of the debtor, who was entitled, expectant on the decease of a tenant for life, to a legacy of larger amount than the debt. Held, that a receiver should be appointed, by way of equitable execution, to receive a sufficient portion of the legacy when it should become payable.—*Mac Nicoll v. Parnell*, 35 W.R. 773.
- (vii.) **C. A.**—*Reference—Judicature Act, 1873, s. 56—Power of Referee.*—In a reference, under section 56 of the Judicature Act, the referee can hold a judicial enquiry by the examination of witnesses, and it is not limited to an inquiry by personal observation.—*Baroness Wenlock v. River Dee Co.*, L.R. 19 Q.B.D. 155.
- (viii.) **C. A.**—*Service out of Jurisdiction—Contract to be Performed within Jurisdiction—Irregularity in Form of Notice in lieu of Writ—Delay—O. xi., r. 1 (e) (f); O. ii., r. 5.*—The Court can allow service out of the jurisdiction on a foreign subject resident abroad in an action for breach of contract within the jurisdiction, if it appears from the circumstances

and the position of the parties that the contract ought to have been performed within the jurisdiction, although the contract does not state in express terms that it ought so to be performed. An application to discharge an order for service of notice of a writ out of the jurisdiction on the ground of irregularity must be made promptly; an application made a year after the date of the order is too late.—*Reynolds v. Coleman*, 35 W.R. 813.

- (i.) **C. A.**—*Third Party Notice—Contract of Indemnity—Marine Insurance—Suing and Labouring Clause*—R.S.C., O. xvi., r. 48.—In an action for work done, at the request of the defendant, in attempting to save his ship, the defendant may not bring in as third party the underwriter of a policy of insurance on the ship, which contained the usual suing and labouring clause.—*Johnston v. Salvage Association*, L.R. 19 Q.B.D. 458; 57 L.T. 218.
- (ii.) **Q. B. D.**—*Trial by Jury—Time of Application—Notice of Trial*—R.S.C. 1883, O. xxxvi., rr. 6, 16.—Where a notice of trial becomes "no longer in force" owing to the cause not being entered for trial, an application for trial by jury made more than ten days after such notice of trial is too late, though made within ten days after a second notice of trial.—*Tousley v. Heffer*, L.R. 19 Q.B.D. 153.
- (iii.) **Q. B. D.**—*Writ out of Jurisdiction*—O. ii., r. 4; O. ix., r. 8—*Appendix to Rules, Part I, Forms 2, 5, & 6*.—A writ against a foreign company having no officers in the United Kingdom must be in Form No. 5 or No. 6. If in Form No. 2 it will be set aside.—*Sedgwick v. Yedras Mining Co.*, 35 W.R. 780.

See Married Woman, p. 13, ii.

### Presumption of Death:—

- (iv.) **Ch. D.**—*Onus Probandi*.—If a person has not been heard of for seven years, there is a presumption of law that he is dead, but there is no presumption as to when during the seven years he died. The person upon whom it rests to prove that he was alive or dead at a particular time must do so by distinct evidence.—*Rhodes v. Rhodes*, 56 L.J. Ch. 825.

### Principal and Agent:—

- (v.) **C. A.**—*Duty of Agent to pay Money—Interest*.—A person who has received money as agent is bound to pay it over to his principal when called on, and in an action for money had and received is chargeable with interest from the time of a refusal to pay.—*Harsant v. Blaine*, 56 L.J. Q.B. 511.
- (vi.) **Q. B. D.**—*Bill of Exchange—Acceptance—Authority to Accept*.—The defendant, a member of a firm about to be dissolved, and an agent appointed by the firm to liquidate the business, opened a joint banking account, and requested the bank to honour drafts signed by either of them. Cheques were drawn on the joint account, signed by the agent in the names of himself and the defendant, and bills were drawn on the firm and accepted by the agent in the names of himself and the defendant and honoured. The defendant had no personal knowledge of the cheques and bills. Held, that the agent had no authority to accept bills in the name of the defendant, and that the defendant was not liable on a bill drawn on the firm, and accepted by the agent in the names of himself and the defendant.—*Odell v. Cormack Brothers*, L.R. 19 Q.B.D. 223.

**Principal and Surety:—**

- (i.) **C. A.**—*Discharge of Principal—Reservation of Rights.*—The acceptor of a bill of exchange for £100, being sued by the holders, paid into Court £30, in satisfaction of the whole cause of action. The holder accepted that sum, having written to the acceptor that the indorser had arranged to pay the balance, and would sue the acceptor. *Held*, that the acceptor was not released, and that the indorser, having paid the balance, could recover it from the acceptor.—*Jones v. Whitaker*, 57 L.T. 216.

**Railway Company:—**

- (ii.) **Ch. D.**—*Appointment of Manager—Rights of Debenture-holders—Railway Companies Act, 1867, s. 4.*—The debenture-holders of a railway company, though they have a right to the appointment of a receiver when their interest is in arrear, have no voice in the management while it is a going concern, and an application by them, their interest being in arrear, to discharge an order for appointment of a salaried manager, on the ground that the expense was unnecessary and prejudicial to them, was refused, the Court having regard to the general interests of the concern, and of all the creditors.—*Re Hull, Barnsley, &c., Ry. Co.*, 57 L.T. 82.
- (iii.) **Ch. D.**—*Compulsory Purchase—Building Agreement—Extension of Time—Declaration of Interest—Jurisdiction—Costs—Offer after Litigation.*—Plaintiffs were in possession of land under a building agreement, under which houses were to be erected by a specified time. The time having expired, the owner of the land waived his right to re-enter. Defendants having given notice to treat in respect of the land, afterwards denied that plaintiffs had any interest. *Held*, that the Court had jurisdiction to declare that the plaintiffs had an interest for which they must be compensated. An offer made after litigation has commenced will not save the unsuccessful party from paying the costs, unless it concedes substantially all that successful party is held entitled to.—*Birmingham and District Land Co. v. L. & N. W. Ry.*, 57 L.T. 185.
- (iv.) **Q. B. D.**—*Roadway over Bridge—Level Unaltered—Liability to Repair—Railways Clauses Act, 1845, s. 46.*—A railway company is liable to keep in repair a roadway on a bridge over their line, though the level of the roadway was not altered, nor the expense of keeping it in repair increased by the construction of the line.—*Mayor, &c., of Bury v. L. & Y. Ry. Co.*, 57 L.T. 99.

**Revenue:—**

- (v.) **Q. B. D.**—*Customs and Inland Revenue Act, 1885—Exemptions.*—An institution for the promotion of a particular branch of knowledge, for the purpose of increasing the intelligence and cultivation of a particular profession which deals with only one branch of knowledge, is not exempt from duty as an institution for the promotion of education, literature, science, or fine arts.—*Re Duty on the Estate of the Institution of Civil Engineers*, 56 L.J. Q.B. 576.
- (vi.) **Q. B. D.**—*Excise—Beer—Dilution—Customs and Inland Revenue Act, 1885, s. 8.*—The adding of weak beer to strong is a dilution of the latter.—*Crafts v. Taylor*, 57 L.T. 310.
- (vii.) **Q. B. D.**—*Stamp Duty on Accounts—Voluntary Settlement—Interest for Life Reserved to Settlor—Customs and Inland Revenue Act, 1881, s. 38, sub-s. 2 (c).*—By a voluntary settlement the settlor assigned a

fund to trustees, on trust to apply the income for the benefit of the settlor and his wife and children, or at their discretion for the benefit of one or more of such persons to the exclusion of the others. *Held*, that an interest for life was reserved to the settlor, and that on his death duty was payable.—*A.-G. v. Heywood*, L.R. 19 Q.B.D. 326; 56 L.J. Q.B. 573; 57 L.T. 271; 35 W.R. 772.

**Set-off.**—See Mortgage, p. 14, iii.

### **Settled Land:—**

- (i.) **Ch. D.**—*Undivided Shares—Powers of Tenant-for-Life—Settled Land Act, 1882, s. 2 (3), (5), (6), ss. 3, 19.*—Devise on trust for the sons of testator, A. and B., in equal shares, as tenants in common for life, and after death of either, on trust for the survivor and the issue of the deceased in equal shares *per stirpes*, and after death of survivor on trust for sale, and to pay one-half of the proceeds to the issue of each son, and in default of issue, as he should appoint. By death of B. without issue, and without exercising the power of appointment, A. became absolutely entitled, as heir-at-law, to a moiety, which he sold to X. *Held*, that such moiety being still subject to the trust for sale, was part of the settled land, and that A. being tenant-for-life of an undivided share only, could not sell without the concurrence of X.—*Re Collinge's Estate*, 57 L.T. 221.

### **Settlement:—**

- (ii.) **H. L.**—*Tenant-for-Life and Remainder-Man—Accumulated Profits of Company Distributed in New Shares.*—Decision of C. A. (see Vol. 10, p. 116, vii.), reversed.—*Bouch v. Sproule*, L.R. 12 App. Cas. 385.

### **Sheriff:—**

- (iii.) **Q. B. D.**—*Liability of Under-Sheriff after Death of Sheriff—Action in Tort and Contract—Waiver.*—After the death of the sheriff, and before the appointment of his successor, the under-sheriff sold goods taken in execution on a writ delivered to him before the death of the sheriff. He did not pay over all the proceeds to the execution creditor, who, more than six months after the death of the under-sheriff, and more than six months after his executors had undertaken administration, sued them for money had and received, and also for the tort. *Held*, that the action for money had and received was good, and that it was not necessary to waive the tort.—*Gloucestershire Bank v. Edwards*, 56 L.J. Q.B. 514; 35 W.R. 842.

### **Ship:—**

- (iv.) **H. L.**—*Bill of Lading—Signature—Duty of Master—Ship's Brokers—Authority.*—Ship's brokers at a foreign port have not, as such, authority to relieve the master from the duty of seeing to the accuracy of statements contained in bills of lading presented to him for signature.—*Stumore, Weston & Co. v. Breen*, 56 L.J. Q.B. 401.
- (v.) **C. A.**—*Bill of Sale—Dumb Barge—Bills of Sale Act, 1874, s. 4.*—An assignment of a dumb barge is not within the Bills of Sale Act.—*Gapp v. Bond*, L.R. 19 Q.B.D. 200; 56 L.J. Q.B. 438.
- (vi.) **Q. B. D.**—*Charter-party—Exceptions—"Strike"—Demurrage.*—The exception in a charter-party relieving the charterer from payment of demurrage in case of "hands striking work," does not include the case of abandonment of work by men through dread of cholera.—*Stephens v. Harris*, 56 L.J. Q.B. 516.

- (i.) **C. A.**—*Charter-party—Bills of Lading—Evidence of Quantity of Goods—Estoppel.*—Where a charter-party provides that bills of lading should, against the shipowners, be conclusive evidence of the quantities of cargo stated therein, the parties are estopped from shewing that the quantities stated in the bills of lading are incorrect.—*Lishman v. Christie*, L.R. 19 Q.B.D. 333; 56 L.J. Q.B. 538; 35 W.R. 744.
- (ii.) **Q. B. D.**—*Collision—Action under £50—Jurisdiction—County Courts Admiralty Jurisdiction Act, 1868, ss. 3, 5.*—An action for damage for injuries caused by collision, may, where the amount claimed does not exceed £50, be tried by a County Court which has not Admiralty jurisdiction.—*Scovell v. Bevan*, L.R. 19 Q.B.D. 428.
- (iii.) **P. D.**—*Co-ownership Action—Bill of Sale—Transfer of Shares—Admiralty Court Act, 1861, s. 8.*—*Quære*, whether the jurisdiction of the Admiralty Court in co-ownership actions is not confined to registered co-owners. *Held*, that managing owners who agreed to sell to the defendant a share in a ship, but had executed no bill of sale, and were never in a position to assign the share, having mortgaged their own shares and being unable to redeem them, had no authority to pledge the defendant's credit as a co-owner, notwithstanding the receipt by the defendant of a sum as profits.—*The Bonnie Kate*, 57, L.T. 203.
- (iv.) **Q. B. D.**—*Compulsory Pilotage—London District—Exemption—Place North of Boulogne—Merchant Shipping Act, 1854, s. 379—Privy Council Order, 21 December, 1871.*—A ship which has come to London from Japan, with a cargo, partly for London and partly for Holland, and has discharged the London cargo and proceeded to Holland, is a ship "trading to" a place north of Boulogne, and exempt from compulsory pilotage in the London district.—*Courtney v. Cole*, L.R. 19 Q.B.D. 447.
- (v.) **C. A.**—*Disbursements—Maritime Lien—Liability of Master—Admiralty Court Act, 1861, s. 10—Admiralty Court Act, 1840, s. 6—Merchant Shipping Act, 1854, s. 191.*—A master has a maritime lien against a ship for disbursements. A master who has incurred liabilities in respect of necessities for the ship can maintain an action *in rem* for disbursements, though he has made no payment in respect of such liabilities at the time of action brought.—*The Sara*, L.R. 12 P.D. 158; 35 W.R. 826.
- (vi.) **Q. B. D.**—*General Average—Stranding—Part of Cargo landed—Liability.*—Part of the cargo of a stranded ship was landed before measures were taken to get the ship off. *Held*, that the expenses incurred in getting the ship off, and in landing such part of the cargo, were not general average expenses to which the owners of such cargo were liable to contribute.—*Royal Mail Steam Packet Co. v. English Bank of Rio de Janeiro*, L.R. 19 Q.B.D. 362.
- (vii.) **C. A.**—*Insurance—Improper Navigation—Cause of Damage arising before Sailing.*—Decision of Q. B. D. (see Vol. 12, p. 79, iv.) affirmed.—*Carmichael v. Liverpool Sailing Ship Owners' Association*, L.R. 19 Q.B.D. 242; 56 L.J. Q.B. 428; 35 W.R. 793.
- (viii.) **Q. B. D.**—*Insurance—Partial Loss—Ship altered instead of Reinstated—Measure of Liability of Underwriters.*—A passenger ship, obsolete for the purposes of a passenger ship, and used only for cargo, having been partly destroyed by fire, the owners, instead of reinstating her, altered her to a cargo ship, the cost of such alteration being less than the cost of reinstating her. The ship after alteration was as valuable for sale or use as before the accident. *Held*, that the owners could only recover from the underwriters what they had lost, and could only recover the actual cost of altering, and not the cost of reinstating the ship.—*Bristol Steam Navigation Co. v. Indemnity Mutual Marine Insurance Co.*, 57 L.T. 101.



- (i.) **Q. B. D.**—*Marine Insurance—Mutual Association—Set-off of Contribution against Loss.*—Sums due from a mutual marine insurance association to one of its members in respect of losses, and sums due from the member to the association in respect of contributions, may be set-off against each other.—*Williams v. The British Marine Mutual Insurance Association*, 57 L.T. 27.
- (ii.) **Q. B. D.** — *Pilotage Certificate — Renewal—Discretion of Pilotage Authority—Merchant Shipping Act, 1854, ss. 340, 341, 342.*—A pilotage authority has an absolute discretion to refuse to renew a pilotage certificate granted to the master or mate of a ship.—*Reg. v. Trinity House*, 35 W.R. 835.
- (iii.) **P. D.**—*Restraint—Bail for Safe Return—Release of Sureties—24 Vict., c. 10, s. 8.*—In an action of restraint two sureties executed a bail bond for the safe return of the vessel. No time was fixed for the expiration of their liability. After the bond had been in existence for three years it was ordered at the application of the sureties to be cancelled, the vessel being in this country, and the ownership of the majority of the shares having been changed.—*The Vivienne*, L.R. 12 P.D. 185; 57 L.T. 316.
- (iv.) **P. D.**—*Salvage—Agreement for Fixed Sum—Primary Liability of Ship.*—An agreement by the master of a ship to pay the salvors a fixed sum, is an agreement made on behalf of the shipowners, and makes them liable to pay the whole amount, and not merely such proportion thereof as the value of the ship and freight bears to the value of the ship, freight, and cargo.—*The Cumbrian*, 57 L.T. 205.
- (v.) **P. D.**—*Salvage—Salving and Salvaged Vessel Belonging to Same Owners—Bill of Lading—Warranty of Seaworthiness.*—The owners of a salving vessel can maintain a salvage action against the owners of cargo shipped in a vessel belonging to themselves. The implied warranty of seaworthiness contained in a bill of lading may be qualified by the provision of the bill of lading.—*Laertes (cargo ex)* L.R. 12 P.D. 187.

#### Solicitor :—

- (vi.) **Ch. D.**—*Costs—Solicitors' Remuneration Act, 1881, s. 6.*—Where money is paid into Court under the Lands Clauses Act, 1845, the solicitor for the owners of the land purchased may elect to be paid for costs of reinvestment under the old system, and not by scale, provided he signifies his election "before undertaking the business."—*Re Bridewell Hospital and Metropolitan Board of Works*, 57 L.T. 155.
- (vii.) **Ch. D.**—*Scale Fee—Negotiating Loan—Investigating Title.*—A solicitor is not entitled to charge the scale fee for negotiating a loan when he has done nothing but bring the lender and borrower together, nor to charge the fee for investigating title when the title needed no investigation.—*Re Eley*, 57 L.T. 253.
- (viii.) **C. A.**—*Dealing with—Undue Influence—Setting Aside Deeds—Delty.*—Decision of Ch. D. (see Vol. 12, p. 80, vii.) affirmed.—*Readdy v. Prendergast*, 56 L.T. 790.
- (ix.) **Ch. D.**—*Taxation—Special Circumstances—Solicitors' Remuneration Act, 1881, Gen. Ord. Sched. I., Part I.—Procuration Fee—6 & 7 Vict., c. 78, ss. 37, 41.*—The charge by a mortgagor's solicitor to his client of a scale fee for "negotiating loan," in addition to the procuration fee according to the scale paid to the mortgagee's solicitor, is an overcharge amounting to fraud so as to entitle the client to an order to tax more than a year after delivery of the bill; especially when the solicitor by

whom the overcharge was made did not comply with his client's instructions to get the bill taxed.—*In re Pybus*, L.R. 85 Ch. D. 568; 85 W.R. 770.

See Attachment, p. 2, v.

### Specific Performance :—

- (i.) **Ch. D.—Agreement for Lease—Commencement of Term—Statute of Frauds.**—A lessee (D.) wrote to his landlord's agents asking for an extension of his term, and offering a premium. The landlord wrote to his agents declining the offer, and added, "as the lease will not run out for two years, I think there is plenty of time to think over the matter. However, if Mr. D. is very urgent, I will consent to grant him a lease for twenty-one years at £50 a year, and a premium of £100." The letter was communicated to D., who accepted the offer. *Held*, that the letter was a new offer on the part of the landlord, and, as it stated no date for the commencement of the lease, was not a sufficient memorandum within the Statute of Frauds.—*Wood v. Aylward*, 57 L.T. 54.
- (ii.) **Ch. D.—Delay in Completion—Damages—Grant of Right of Way.**—Where there has been delay in completion of an agreement to make a road within a certain time, and to grant a right of way, owing to the grantor being unable to obtain immediate possession of the necessary land, the grantee is entitled to specific performance with costs, but not to damages.—*Rowe v. London School Board*, 57 L.T. 182.

### Stamp :—

- (iii.) **H. L.—Ad Valorem Duty—Compensation for Loss of Trade—Stamp Act, 1870, s. 70 & Schedule—Compulsory Sale.**—In a conveyance on a compulsory sale to a railway company, a sum paid to the vendors as compensation for loss of trade is part of the consideration, and liable to stamp duty.—*Commissioners of Inland Revenue v. Glasgow and South-Western Ry. Co.*, L.R. 12 App. Cas. 315.

### Tenant for Life :—

- (iv.) **Ch. D.—Mines—Fixtures.**—A tenant for life of real estate who was entitled to work mines on the estate and to use the working stock and plant of the mines, erected machinery and furnaces and laid down a railway on the estate. *Held*, that his right was to enjoy the chattels, and not merely to carry on a business, and his position that of a donee of consumable chattels. *Held*, also, that machinery placed by him on the land and capable of removal by disturbing the soil without destroying the land belonged to his executor as trade fixtures.—*Ward v. Countess of Dudley*, 57 L.T. 20.

### Trade Mark :—

- (v.) **C. A.—Misrepresentation—Trade Custom.**—A person importing cigars manufactured in Germany of Havannah tobacco, and using a trade-mark which implies that they were made in Havannah, cannot claim protection for his trade-mark, although it is a custom of the cigar trade to mark cigars not imported from Havannah in a manner which implies that they are so imported.—*Newman v. Pinto*, 57 L.T. 31.
- (vi.) **Ch. D.—Rectification of Register—Colour—Similarity.**—A trade-mark expunged from the register on the ground that, having regard to the use to which it might be put by being coloured, it was calculated to deceive.—*Re Biegel's Trade Mark*, 57 L.T. 247.



- (i.) **Ch. D.**—*Sale by Manufacturer in Bulk—Sale by Retail Dealer—Right to use Trade-Mark.*—A manufacturer who sells to a retail dealer, in bulk, an article usually sold in small quantities, without any restriction on its disposal, must be taken to authorise him to sell it as his vendor's manufacture, and cannot restrain him from selling it under a name registered by the manufacturer as his trade-mark.—*Condy & Mitchell v. Taylor*, 56 L.T. 891.

### Trade Name:—

- (ii.) **Ch. D.**—*Exclusive User.*—It requires a strong case to establish a right to the exclusive use of another person's name. Where plaintiff had originated a series of concerts conducted by R., under the name of the R. concerts, *held*, that he could not prevent the defendant from advertising a series of R. concerts, R. having transferred his services to the defendant.—*Franke v. Chappell*, 57 L.T. 141.

### Trade Union:—

- (iii.) **Ch. D.**—*Restraint of Trade—Legality of Rules—Winding-up—Distribution of Funds—Trade Union Act, 1871, ss. 3, 4.*—Members of a trade union who have been expelled for breach of rules, which operate in restraint of trade, but are not otherwise illegal, cannot claim a share in the distribution of the funds of the union on its winding-up. After an inquiry has been directed as to the persons entitled to share in the fund, it is too late to object that the Court has no power to distribute the fund.—*Strick v. Swansea Tin Plate Co.*, 35 W.R. 830.

### Trustee:—

- (iv.) **Ch. D.**—*Appointment of New Trustees of Part of Property—Conveyancing Act, 1882, s. 5 (1).*—There is no power to appoint new trustees of part of the trust property while the old trustees continue trustees for the remainder. —*Saville v. Couper*, 56 L.T. 907 ; 35 W.R. 829.
- (v.) **C. A.**—*Appointment of New Trustee—Person of Unsound Mind—Trustee Act, 1850, ss. 2, 34.*—A person subject to a permanent incapacity of mind, rendering him incapable of transacting business, even though his state is not such that he would be found a lunatic by inquisition, is a person of unsound mind within the Trustee Act, 1850.—*In re Martin*, 56 L.J. Ch. 695.
- (vi.) **Ch. D.**—*Appointment of New Trustee—Vesting Order—Trustee Act, 1850, s. 10—Trustee Extension Act, 1852, s. 8.*—A new trustee having been appointed by the Palatine Court in place of a trustee convicted of felony, *held*, that a vesting order of property outside the jurisdiction of the Palatine Court could not be made under the Trustee Extension Act. But, *held*, that an order could be made under the Trustee Act, there being evidence that the convict trustee could not be found.—*Re Hulme's Trusts*, 57 L.T. 13.
- (vii.) **Ch. D.**—*New Trustee—Vesting Order—Trustee Act, 1850, ss. 32, 34—Conveyancing Act, 1881, s. 30.*—On the appointment of a new trustee of a will, the legal estate in the trust property having been left outstanding in the testator's heir-at-law, who had died, and of whom no legal personal representative had been constituted, the Court made an order that the real property subject to the trusts of the will should vest in the new trustee for all the estate of the heir-at-law therein at the time of his death.—*Re Williams' Trust*, 56 L.T. 884.

- (i.) **Ch. D.**—*Repudiation of Contract by Cestui-que-trust—Earmarked Assets.*—A client pretended to have invested his client's money on four mortgages. Three turned out valueless, and the client by an action in respect of the fourth obtained part of the money due. *Held*, that he could repudiate the contract as regards the first three mortgages, but not as regards the fourth which he had affirmed. *Held*, also, that the client could follow money which could be indentified as part of his money in the hands of the solicitor's representatives.—*Dickson v. Murray*, 57 L.T. 223.
- (ii.) **Ch. D.**—*Unauthorised Mortgage—Rights of Mortgagee—Moneys Recovered from Trustee.*—Where a trustee has raised money on a mortgage of the trust estate which was not authorised by his powers, and has misappropriated that money and other trust funds, the mortgage may be set aside in an action by the beneficiaries, the mortgagee being entitled to receive a proportionate part of a sum which had been recovered from the trustee in respect of his misappropriations.—*Walker v. Southall*; *Southall v. Walker*, 56 L.T. 882.

See Practice, p. 17, v. Attachment, p. 2, iv.

### Vendor and Purchaser :—

- (iii.) **C. A.**—*Covenant for Further Assurance—Deed to Enlarge Base Fee.*—Decision of Ch. D. (see Vol. 12, p. 83, ii.) affirmed.—*Bankes v. Small*, 56 L.J. Ch. 832; 57 L.T. 292; 35 W.R. 765.

### Voluntary Gift :—

- (iv.) **Ch. D.**—*Declaration of Trust.*—A. signed a promissory note payable on demand to X., and gave it to his solicitor to be kept till his death and then the amount to be paid to X. if still in his service. The fact was communicated to X. who was in the service of A. at his death. *Held*, a good declaration of trust in favour of X.—*Shenstone v. Brock*, 57 L.T. 249.
- (v.) **C. A.**—*Independent Advice—Laches.*—Decision of Ch. D. (see Vol. 12, p. 83, vii.) affirmed for different reasons. *Held*, that the case was within the principle of a gift to a confidential adviser, but that the plaintiff had confirmed her voidable gifts.—*Allcard v. Skinner*, 57 L.T. 61.

### Warranty :—

- (vi.) **H. L.**—*Sale of Goods by Sample—Latent Defect—Quality.*—On a sale of goods by sample, "quality" to be equal to samples furnished by the vendor, the word "quality" means such qualities as are patent or discoverable from such examination of the samples as the purchaser might reasonably be expected to make; and does not extend to latent defects, rendering the article unmerchantable for the purpose for which the order was given, of which such examination would give the purchaser no notice.—*Drummond v. Van Ingen*, L.R. 12 App. Cas. 284; 56 L.J. Q.B. 563; 57 L.T. 1.

### Waterworks :—

- (vii.) **Ch. D.**—*New River Company's Act, 1852, ss. 35, 38, 39, 40, & 41—Waterworks Clauses Act, 1847—House—Dwelling-house—Domestic Purposes.*—In a warehouse in which no person resided, water was used for a hydraulic lift, for water-closets and lavatories. *Held*, that it was not a dwelling-house, that the word "house" in section 35 means a dwelling-house, and that the case was not within section 35. *Held*, also, that the case was within section 41, which is obligatory on the company. *Held*, also, that sections 39 and 40 are merely declaratory.—*Cooke v. New River Co.*, 56 L.J. Ch. 850; 57 L.T. 228.

**Will:—**

- (i.) **C. A.**—*Construction—Charitable Bequest.*—Decision of Ch. D. (see Vol. 12, p. 51, v.) affirmed. — *Re Douglas; Obert v. Barrow*, L.R. 35 Ch. D. 472; 56 L.T. 786; 35 W.R. 740.
- (ii.) **Ch. D.**—*Construction—Forfeiture on Alienation—Bankruptcy—Annulment.*—Devise and bequest on trust to pay income to beneficiary till he should become bankrupt or assign charge or incumber, with gift over. *Held*, that the gift over took effect in consequence of insolvency proceedings against the beneficiary in Melbourne, instituted before the testator's death, under which trustees of the estate were appointed, though the insolvency was annulled shortly after, income having in the meantime been received by the trustees of the will.—*Peat v. Broughton*, 57 L.T. 8.
- (iii.) **C. A.**—*Construction—Gift of Rents and Income—Life or Absolute Interest.*—Decision of Ch. D. (see Vol. 12, p. 84, iii.) affirmed as to part, and reversed as to the remainder, of the property passing under the will.—*Coward v. Larkman*, 57 L.T. 285.
- (iv.) **Ch. D.**—*Construction—Gift to Servants—Legacy Duty.*—Under a gift to a testator's servants, those are entitled who are in his service at the time of his death. A gift of six months' "full" salary is not a gift free of legacy duty.—*Marcus v. Marcus*, 56 L.J. Ch. 830.
- (v.) **Ch. D.**—*Construction—Illegitimate Child—Inclusion in Class of Children.*—The fact that an illegitimate son of the testator's sister is described in the will as the testator's nephew, is not sufficient to entitle him to share in a gift to the children of that sister, she having legitimate children.—*Branston v. Weightman; In re Hall*, L.R. 35 Ch. D. 551; 56 L.J. Ch. 780; 57 L.T. 42; 35 W.R. 797.
- (vi.) **Ch. D.**—*Construction—"Issue."*—Gift of real and personal estate to "my two sons for their natural life subject to the condition of paying" certain legacies. "If my sons marry and have issue, I give to each of their heirs their fathers' share, and to their heirs for ever; if there is no male issue with either of my two sons, and there is female issue, then the fathers' share shall be divided between them share and share alike as tenants in common, and to their heirs for ever. Should either of my sons die without issue, then such son's share shall go to my other son and to his heirs for ever. Should both of my sons die without issue, then at the death of the last of them, I give all my real property to the whole of my grandchildren share and share alike as tenants in common and to their heirs for ever." The testator directed that his two sons should pay out of the real property any payment due thereon. *Held*, an estate tail male in the real, and an absolute interest in the personal property.—*Tolman v. Score*, 57 L.T. 40.
- (vii.) **Ch. D.**—*Construction—Legacy, General or Specific—Gift of Shares—Alteration of Company.*—A testator gave a legacy of fifty shares in the York Union Banking Company, being possessed of more than that number of shares. Before his death the company was registered as a limited company, and the amount of the shares was altered. *Held*, that the legacy was general, and failed for uncertainty.—*Dresser v. Gray; re Gray*, 57 L.T. 132; 35 W.R. 795.
- (viii.) **Ch. D.**—*Construction—"Other Sons"—"To be Begotten."*—Devise to second and third sons of testator successively for life, with remainder to their sons in tail male, with remainder to his fourth, fifth, and all and

every other son of his body on the body of his wife to be begotten, and to the heirs male of the bodies of such sons ; remainder to his daughters. Testator left three sons and five daughters. The limitations to the second and third sons failed ; *held*, that the eldest son was not entitled under the devise to " other sons."—*Locke v. Dunlop*, 56 L.J. Ch. 697 ; 57 L.T. 157.

- (i.) **Ch. D.**—*Forfeiture—Felony—Act to Abolish Forfeitures for Treason and Felony*, 1870, ss. 8, 30.—Bequest on trust to pay interest to H. for life, but " if he should by his own act, or by operation of law, be deprived of the absolute personal enjoyment of the interest," then over. H. was sentenced to penal servitude for felony, and having obtained a ticket-of-leave, he was *held* entitled to maintain an action for administration of the trusts of the will. *Held*, further, that he had not forfeited his life interest, and was entitled to all arrears of income.—*Darley v. King ; King v. Darley*, 57 L.T. 219.
- (ii.) **P. D.**—*Execution—Full Attestation Clause—Parol Evidence of Witnesses—Intestacy—Wills Act*, ss. 9, 10.—Where a will appeared on the face of it to have been duly executed, and the attestation clause was in full accordance with the Wills Act, the Court gave effect to the parol evidence of the witnesses varying the terms of the attestation clause, and found on their evidence that the will had not been duly executed.—*Glover v. Smith*, 57 L.T. 60.



# Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times  
Reports, and Weekly Reporter,

FOR NOVEMBER, DECEMBER, 1887, AND JANUARY, 1888.

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## Administration :--

- (i.) **Ch. D.** -- *Charge of Legacies -- Back Rents.* -- Where a devisee or his assignees have been in possession of real estate charged with legacies, and the estate proves insufficient to satisfy the legacies, the legatees are not entitled to back rents. -- *Garratt v. Allen* ; *Allen v. Longstape*, L.R. 37 Ch. D. 48.
- (ii.) **Ch. D.** -- *Class Enquiry - Costs - Incidence.* -- The residue of an estate cannot be relieved from the costs of an enquiry as to the persons entitled to a legacy given to a class, either by payment into Court, or by any other severance of such legacy. -- *In re Gibbons*, L.R. 36 Ch. D. 486 ; 56 L.J. Ch. 911 ; 36 W.R. 180.
- (iii.) **Ch. D.** *Costs -- Charges and Expenses -- Proceedings against Defaulting Solicitor.* -- The solicitor of the administrator of a deceased intestate having retained moneys belonging to the estate, the administrator obtained an order to strike him off the Rolls. *Held*, that the costs of obtaining such order, and other proceedings against the solicitor, ought to be allowed the administrator, so far as they were for the benefit of the estate. -- *Muncalt v. Davis*, 57 L.J. Ch. 3 ; 57 L.T. 755.
- (iv.) **Ch. D.** -- *Officer of Savings Bank -- Debt to Bank -- Insolvent Estate -- Priority -- Transfer -- Savings Bank Act, 1863, s. 14 -- Judicature Act, 1875, s. 10 -- Bankruptcy Act, 1883, ss. 40, 125.* -- In the administration in the Chancery Division of the insolvent estate of an officer of a savings bank, a debt due to the bank has priority, though in bankruptcy there is no such priority. The provisions of the Bankruptcy Act abolishing such priority are not incorporated by the Judicature Act into the rules of administration in the Chancery Division. The administration may, at the instance of a creditor, be transferred to the Court of Bankruptcy. -- *Jones v. Williams*, L.R. 36 Ch. D. 573 ; 57 L.T. 756 ; 36 W.R. 34.

- (i.) **P. D.**—*Revocation—Grant to Creditor—Absence of Administrator.*—Administration to the estate of an intestate had been granted to a creditor. The creditor having received the amount of his debt absconded, and was adjudicated a bankrupt. The estate afterwards became entitled to the proceeds of two policies of insurance, which had been mortgaged. On the application of the mortgagees the Court revoked the grant to the creditor, and granted administration to the next-of-kin.—*In the goods of Bradshaw*, 57 L.J. P. 12.

#### **Adulteration :—**

- (ii.) **Q. B. D.**—*Sale of Food and Drugs Act, 1875, s. 6—Pharmacy Act, 1867, s. 15—Standard of Quality of Drugs.*—A person selling a drug which is not in accordance with the description contained in the British Pharmacopœia, can be convicted under section 6 of the Sale of Food and Drugs Act, though the purchaser did not specifically ask for the drug “prepared according to the British Pharmacopœia.”—*White v. Bywater*, L.R. 19 Q.B.D. 582.

#### **Arbitration :—**

- (iii.) **Q. B. D.**—*Implied Contract to Pay Remuneration.*—An agreement to refer a mercantile dispute to arbitration implies a contract to pay the arbitrators and their umpire reasonable remuneration.—*Crompton v. Ridley*, L.R. 20 Q.B.D. 48.
- (iv.) **Q. B. D.**—*Agreement to refer Future Differences—Revocation as to Particular Difference—Common Law Procedure Act, 1854, s. 11.*—By an agreement between the parties it was provided that all future matters in difference should be referred to named arbitrators. On a difference arising the plaintiffs revoked their submission, and issued a writ. Held, that there was no agreement to refer capable of being performed, and that the defendants were therefore not entitled to a stay of proceedings.—*Deutsche Springsteff Gesellschaft v. Briscoe*, 57 L.J. Q.B. 4.
- (v.) **H. L.**—*Revocation of Submission—Mistake of Arbitrator in Law—Jurisdiction of Court—3 & 4 Will. IV., c. 42, s. 39.*—The Court can give leave to revoke a submission to arbitration where it appears that the arbitrator is making a mistake in a point of law; and the power will be exercised unless the parties agree to raise the point by a special case.—*East & West India Dock Co. v. Kirk*, L.R. 12 App. Cas. 738.

#### **Artizans Dwellings Act :—**

- (vi.) **Q. B. D.**—*Artizans and Labourers Dwellings Act, 1868, ss. 3, 5, 7, 25—Owner—Accrual of Liability.*—A notice was served on H. that certain houses were unfit for habitation. H. was lessee for a term which expired on the following Michaelmas day, and was also assignee of a reversionary lease of twenty-one years to commence on the same day. An order was made after the said Michaelmas day to do certain works, and on the completion of the works by H. a charging order was made on the premises. Held, that H. was properly served with the notice as “owner,” having a possessory interest for a term of more than twenty-one years; and that the liability or benefits under the further proceedings accrued from the date of the notice, and not from the date of the order to do the works.—*Reg. v. Marylebone Vestry*, 36 W.R. 271.

#### **Attachment :—**

- (vii.) **C. A.**—*Debtors Act, 1869, s. 4, sub-s. (3) —Defaulting Trustee—Fraud.*—A trustee may be attached for default in payment of any sum in his possession or under his control which he has been ordered to pay, though no fraud is alleged against him.—*Preston v. Etherington*, 36 W.R. 49.

- (i.) **C. A.**—*Solicitor—Bankruptcy—Debtors Act, 1865, s. 4, sub-s. 4—Bankruptcy Act, 1883, ss. 9, 10.*—See<sup>e</sup> Vol. 13, p. 2, v. The Court of Appeal refused to interfere with the discretion of the Court below.—*Re Aaron Wray*, L.R. 36 Ch. D. 138; 56 L.J. Ch. 1106; 57 L.T. 605; 36 W.R. 67.
- (ii.) **Ch. D.**—*Solicitor—Town Agent—Fiduciary Capacity—Debtors Act, 1869, s. 4, sub-ss. 3, 4.*—A town agent for a country solicitor made default in payment of a sum ordered to be paid by him in an action for an account of his agency. *Held*, that he was liable to imprisonment as a person acting in a fiduciary capacity, but not as a solicitor ordered to pay in his capacity of officer of the Court.—*Litchfield v. Jones*, L.R. 36 Ch. D. 530.

### Bankruptcy:—

- (iii.) **Ch. D.**—*Adjudication after Abortive Composition—Relation to Act of Bankruptcy—Fraudulent Preference—Bankruptcy Act, 1869, s. 6, sub-s. 4, ss. 11, 92, 126.*—A few days after executing a mortgage the mortgagee presented a petition for liquidation. Resolutions for a composition were duly passed and confirmed. Nine years after he was adjudicated a bankrupt, on the ground that the composition could not proceed without injustice to the creditors. *Held*, that the trustee's title did not relate back to the presenting of the petition; and that having regard to the time which had elapsed the mortgage was not a fraudulent preference.—*Sharp v. McHenry*, 57 L.T. 606.
- (iv.) **Q. B. D.**—*Administration of Insolvent Estate—Jurisdiction—Bankruptcy Act, 1883, s. 125.*—Where the insolvent estate of a deceased person is administered in bankruptcy, the Court must follow the practice of the Chancery Division, and cannot make orders on a stranger to pay over money which could not have been made by the High Court.—*E. p. Ellis*; *in re Crowther*, L.R. 20 Q.B.D. 38; 36 W.R. 189.
- (v.) **Q. B. D.**—*Deed of Assignment—Payment of Solicitor's Costs—Receiving Order—Order to Repay—Bankruptcy Act, 1883, s. 4, sub-s. 1 (a).*—The debtor having executed a deed of assignment, the trustee paid the solicitor's costs of the deed out of assets collected. A receiving order having been made, the act of bankruptcy being the execution of the deed; *held*, that the trustee under the deed must refund the costs so paid.—*E. p. Rawlings*; *re Foster*, 36 W.R. 144.
- (vi.) **Q. B. D.**—*Disclaimer of Lease—Mortgage by sub-demise—Vesting Order—Application by Landlord—Bankruptcy Act, 1883, s. 55.*—Leave having been given to the trustee in a bankruptcy to disclaim a lease, the Court may order, on the application of the landlord, that a mortgagee by sub-demise of the bankrupt's interest, should either accept an order vesting in him the disclaimed property, subject to the liabilities and obligations contained in the lease, or should be excluded from all interest in, or security over the property.—*E. p. Shilson*; *in re Cock*, 36 W.R. 187.
- (vii.) **Q. B. D.**—*Execution—Sheriff—Costs—Expenses of reaping Growing Crops—Bankruptcy Act, 1883, s. 46.*—The sheriff, having taken growing crops in execution, incurred expenses in reaping and threshing the same. No authority to do so was given by the execution debtor or creditor. *Held*, that though the expenditure had increased the selling value of the corn, the sheriff was not entitled to the same as costs of the execution.—*E. p. Conder*; *in re Woodham*, L.R. 20 Q.B.D. 40; 57 L.J. Q.B. 46.



- (i.) **Q. B. D.**—*Expunging Proof—Locus Standi of Bankrupt—Provable Debt—Liability incurred subsequently to Receiving Order.*—A bankrupt has a *locus standi* to move to expunge a proof, if the acceptance of a scheme for composition was prevented by the vote of the creditor whose proof is sought to be expunged. Where the plaintiff in an action files his petition in bankruptcy and a receiving order is made, the defendant who recovers judgment with costs after the order cannot prove for such costs.—*E. p. Bluck; in re Bluck*, 56 L.J. Q.B. 607; 57 L.T. 419.
- (ii.) **Q. B. D.**—*Judgment—Stay of Execution—Interpleader—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—Judgment having been recovered against the debtor, and the sheriff having seized certain goods under a *fi. fa.*, which were claimed by a third person, an interpleader order was made, under which the claimant paid a sum of money into Court, and the sheriff withdrew from possession; *held*, not to be a stay of execution, so that a bankruptcy notice afterwards issued was good.—*E. p. Lindsey; re Bates*, 57 L.T. 417.
- (iii.) **Q. B. D.**—*Local Rate—Public Health Act, 1875, s. 211, sub-s. (3)—Bankruptcy Act, 1883, s. 40, sub-s. 1 (a).*—Petition filed in January, when the bankrupt was tenant of a house under a lease. In February the trustee sold the lease and the bankrupt remained in possession as tenant to the purchaser. There was due, at the date of the receiving order, a half-year's rate for the half-year ending in March. *Held*, that the bankrupt's estate was liable for the whole half-year.—*E. p. Ystrad. fodwy Local Board; re Thomas*, 57 L.J. Q.B. 39; 36 W.R. 143.
- (iv.) **Q. B. D.**—*Married Woman—Married Women's Property Act, 1882, s. 1, sub-s. 5.*—A married woman who does not carry on a separate trade is not subject to the Bankruptcy Laws.—*E. p. Coulson; re Gardiner*, 36 W.R. 142.
- (v.) **Q. B. D.**—*Practice—Security for Costs—Proof by Creditor Resident Abroad.*—The Court has no jurisdiction to order security for costs to be given by a creditor resident abroad, who is appealing against the rejection of his proof by the trustee.—*E. p. Izard; in re Vanderhaage*, L.R. 20 Q.B.D. 146.
- (vi.) **C. A.**—*Removal of Trustee—Restraining Creditors Meeting—Bankruptcy Act, 1869, ss. 65, 72, & 83, sub-s. 4.*—There is jurisdiction in bankruptcy to restrain creditors from holding a meeting for the purpose of removing a trustee. Such a meeting was restrained when notice of it had been given by creditors interested in a large debt, the proof of which the trustee was about to move to expunge.—*E. p. Sayer; in re Mansel*, L.R. 18 Q.B.D. 679; 56 L.J. Q.B. 605.
- (vii.) **Q. B. D.**—*Voluntary Settlement—Lien of Trustees for Costs—Bankruptcy Act, 1883, s. 47.*—A. having executed a post-nuptial settlement, attempted to have it set aside; the trustees successfully defended the action. A. filed his own petition within two years of the date of the settlement, by which it became void. *Held*, that the trustees were entitled to a lien on the trust funds for their costs of the action.—*E. p. Official Receiver; in re Holden*, L.R. 20 Q.B.D. 43; 57 L.J. Ch. D. 47; 36 W.R. 189.
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- See Administration, p. 29, iv.

### Bill of Exchange:--

- (viii.) **Ch. D.**—*Bill Drawn in South Australia—Non-Acceptance in England—Rate of Interest—Exchange—Bills of Exchange Act, 1882, s. 57.*—A bill, payable in London, was drawn and purchased in South Australia, and

was dishonoured for non-acceptance. The South Australian Bills of Exchange Act is identical with the Bills of Exchange Act, 1882, except that 10 per cent. interest is given for a dishonoured bill. *Held*, that the right of the holder was to re-exchange and not interest, and that it was impossible to treat the 10 per cent. interest as a fixed sum due by the custom of South Australia instead of re-exchange.—*Re The Commercial Bank of South Australia*, L.R. 36 Ch.D. 522; 57 L.T. 395.

### Bill of Sale:—

- (i.) **C. A.**—*Covenant Necessary for Maintenance of Security*.—By a bill of sale the mortgagor undertook to pay all rent and other outgoings of the premises on which the goods assigned might be; and it was provided that, in default of such payment, the mortgagee might pay any rent, &c., then due, and that such payments, with interest, should be charged on the goods. *Held*, that the bill of sale was void.—*Real and Personal Advance Co. v. Clears*, 36 W.R. 256.
- (ii.) **C. A.**—*Defeasance—Promissory Note Forming part of the Contract*—*Bills of Sale Act*, 1878, s. 10.—The grantor of a bill of sale, which made the sum secured, with interest, payable by equal instalments, also gave the grantee a promissory note, promising to pay by instalments a sum which represented the total amount of principal and interest payable under the bill of sale, the instalments being of the same amount and payable on the same days as those under the bill of sale; and the note provided that in default of payment of one instalment the whole should become due. *Held*, that the note was a “defeasance,” and that the bill of sale was void. — *Counsell v. London & Westminster Loan and Discount Co.*, L.R. 19 Q.B.D. 512; 56 L.J. Q.B. 622; 36 W.R. 53.
- (iii.) **C. A.**—*Description of Chattels—Sufficiency*—*Bills of Sale Act* (1878) *Amendment Act*, 1882, s. 4.—Decision of Q. B. D. (see Vol. 13, p. 4. i.) affirmed.—*Witt v. Banner*, L.R. 20 Q.B.D. 114; 36 W.R. 115.
- (iv.) **Ch. D.**—*Description of Grantor—True Copy—Blanks*—*Bills of Sale Act*, 1878, s. 10, sub-s. 2.—The description of the grantor as a “contractor and financial agent” is sufficient. A bill of sale is not invalidated by reason of blanks in the copy registered, if they are such as could not mislead.—*Sharp v. McHenry*, 57 L.T. 606.
- (v.) **Q. B. D.**—*Statutory Form—Invalidity—Other Property than Personal Chattels*.—Where a bill of sale is avoided by reason of want of conformity with the statutory form, it is invalid altogether, and is not a good security as regards property comprised in it other than personal chattels.—*E. p. Burne; in re Burdett*, 36 W.R. 128.

### Building Society:—

- (vi.) **C. A.**—*Unincorporated Society—Petition for Winding-up—Dismissal—Appeal—Incorporation—Building Societies Act*, 1836—*Building Societies Act*, 1874, ss. 4, 32.—Where a petition has been presented for the compulsory winding-up of a building society, then unincorporated, and has been dismissed, the fact that the society has been incorporated since notice of appeal from the dismissal was given, ousts the jurisdiction of the Court of Appeal.—*Re Old Swan and West Derby Building Society*, 57 L.T. 381.
- (vii.) **C. A.**—*Withdrawing Member—Return of Subscriptions—Funds Available—Arbitration*—37 & 38 Vict., c. 42, s. 34.—A refusal of the board of a building society to return his subscriptions to a withdrawing member on the ground that there were no funds available, such allegation being denied by the member, is a dispute which ought to be referred to arbitration. — *Walker v. General Mutual Building Society*, L.R. 36 Ch. D. 777; 57 L.T. 574.

**Burial Board :—**

- (i.) **Q. B. D.**—*“Exclusive Right of Burial”*—*Right of Board to Regulate—Object placed on Grave*—*Burial Acts, 15 & 16 Vict., c. 85, and 16 & 17 Vict., c. 134.*—A burial board has full jurisdiction to regulate its burial ground. Though the exclusive right of burial in any part of the ground has been granted by the board, the grantee cannot place on a tomb any object which the board objects to.—*Lancaster Burial Board v. M’Gough*, 36 W.R. 159.

**Colonial Law :—**

- (ii.) **P. C.—Canada.**—*Provincial Legislatures and Dominion Parliament—Power of Taxation—British North America Act, 1867, ss. 91 & 92—Direct Taxation.*—For legal purposes a tax may be properly called “direct,” though it is not general. It is not *ultra vires* of a provincial legislature to impose a tax on banks for provincial purposes, the tax being proportional to the paid-up capital with a fixed sum in addition for each office or place of business; and such tax may be lawfully imposed on a bank which has its principal place of business outside the province, but has an agency within the province.—*Bank of Toronto v. Lambe*, 1 R. 12 App. Cas. 575; 56 L.J. P.C. 87; 57 L.T. 377.
- (iii.) **P. C.—Canada.**—*Railway Company—Right to Commence Operations—Dominion Act, 46 Vict., c. 24, s. 4—Consolidated Railway Act, 1879.*—An order of the railway committee does not of itself authorise a railway company to take or interfere with any person’s land for the purpose of carrying out the requirements of the committee, but all the provisions of the Consolidated Railway Act, 1879, under the headings of “Plans and Surveys,” and “Lands and their Valuation,” must be complied with before the company can commence operations. The taking of land and the interference with rights over land are on the same footing. Payment of compensation is a condition precedent to the right of the company to take land or interfere with rights over it.—*Parkdale Corporation v. West*, L.R. 12 App. Cas. 602; 56 L.J. P.C. 66; 57 L.T. 602.
- (iv.) **P. C.—Malta.**—*Legitimation—Jurisdiction—Children Ex Nefario Coitu.*—The law of Malta as to legitimation is to be found in the Code Rohan and the Maltese precedents. The jurisdiction over petitions for legitimation is in the Third Hall of the Civil Court. Only the interests of the child and the parents’ family need be considered; other persons whose interests may be affected need not be cited; and the Court cannot attach conditions for their protection. Children born *ex nefario coitu* may be so legitimated. Children so legitimated can take under limitations in favour of legitimate and natural children unless there is a plain expression of contrary intention.—*Gera v. Ciantar*, L.R. 12 App. Cas. 557; 56 L.J. P.C. 93.
- (v.) **P. C.—New South Wales.**—*Action of Tort Against Government—Colonial Act, 39 Vict., No. 38.*—The Government of New South Wales is liable to be sued in an action of tort.—*Farnell v. Bowman*, L.R. 12 App. Cas. 643; 56 L.J. P.C. 72; 57 L.T. 318.

**Company :—**

- (vi.) **C. A.**—*Ancient Fishery—Winding-up—Discretion—Companies Act, 1862, ss. 89, 199.*—Decision of Ch. D. (see Vol. 12, p. 95, iv.) reversed, on the ground that a winding-up would be useless, as the property of the company could not be sold.—*Re Company of Free Fishermen of Faversham*, L.R. 36 Ch. D. 329; 57 L.T. 577.

- (i.) **Ch. D.**—*Borrowing Powers—Ultra Vires—Improvement Loan—Land Improvement Company's Acts, 1853, 1855, 1859—Indorsed Receipt—Benefit of Charge.*—The provisions of the Land Improvement Company's Acts, whereby a charge on land may be created by an order of the Inclosure Commissioners, do not enable a company with limited borrowing powers to exceed the limit for the purpose of getting an improvement loan under the Acts. *Semble*, that although a receipt indorsed on an order creating a charge under these Acts extinguishes the charge, yet the person by whose money the loan has been repaid will be entitled to the benefit of the charge.—*Baroness Wenlock v. River Dee Co.*, L.R. 36 Ch. D. 674; 56 L.J. Ch. 899; 57 L.T. 401.
- (ii.) **C. A. & Ch. D.**—*Contract to Issue Fully Paid-up Shares—Non-Registration—Winding-up—Claim of Contributory to Prove for Damages—Companies Act, 1867, s. 25.*—A company issued preference shares at a discount, the certificates declaring them to be fully paid up. No contract to issue them as fully paid up was registered. *Held*, that assuming such contract to have existed, the holder of the shares having paid in the winding-up as a contributory the amount remaining unpaid on the shares could not prove for such amount as damages for breach of contract.—*In re Addlestone Linoleum Co.; Benson's Claim*, 36 W.R. 57 & 227.
- (iii.) **P. C.**—*Director—Contract with Company—Vote of Director as Shareholder.*—Although a director of a company cannot enter into engagements in which his personal interest may conflict with that of the company, or deal, on behalf of the company, with himself, yet the fact that he is a director will not deprive him of his right to vote as a shareholder at a meeting of the company, in support of any resolution which he may deem favourable to his own personal interests.—*The North-West Transportation Co. v. Beatty*, L.R. 12 App. Cas. 589; 56 L.J. P.C. 102; 57 L.T. 426.
- (iv.) **C. A.**—*Director—Removability—Adoption of Agreement Prior to Formation of Company.*—By an agreement between B. and a trustee for a proposed company, B. was to be a director and irremovable for a term. The articles provided that the directors should adopt and carry into effect the agreement, which should be construed as part of the articles. The agreement was acted on, but no contract adopting it was made between B. and the company. *Held*, that the articles were a contract between the members of the company, and that there was no agreement between B. and the company. *Quære*, whether the Court will enforce a stipulation that a director shall be irremovable.—*Browne v. La Trinidad*, L.R. 37 Ch. D. 1.
- (v.) **Ch. D.**—*Payment of Dividends out of Profits—Duty of Auditor—Directors.*—It is the duty of the auditor of a company to see that the balance-sheet is properly drawn up so as to contain a true and correct representation of the state of the company's affairs. Where the manager prepared delusive balance-sheets, which were improperly certified as correct by the auditor, and the directors, in reliance thereon, paid dividends out of capital, *held*, that the directors were liable in a winding-up to make good such payments, and that the manager and auditor were liable in damages for the amounts so paid.—*Leeds Estate Building and Investment Company v. Shepherd*, L.R. 36 Ch. D. 787; 57 L.J. Ch. 46; 57 L.T. 684.
- (vi.) **Ch. D.**—*Shares—Article Providing for Surrender.*—The articles of association of a company provided that all servants of the company should, on the termination of their service, surrender their shares to the company. *Held* to be *ultra vires*.—*Re Walker and Hacking*, 57 L.T. 763.

- (i.) **Ch. D.**—*Winding-up—Balance Order.*—The liquidator cannot bring an action against a contributory on a balance order.—*Chalk, Webb, and Co. v. Tennent*, 57 L.T. 598; 36 W.R. 263.
- (ii.) **C. A.**—*Winding-up—Contributory—Contract to take Paid-up Shares—Duty to Register the Contract—Companies Act, 1867, s. 25.*—Where a company enters into a contract to issue shares to a person as fully paid up for a consideration other than a payment in cash, such person is not bound to see to the registration of the contract, and is not liable for the amount of the shares, unless he has, by something besides entering into the contract, assented to his name being registered as a shareholder.—*Re Barangah Oil Refining Co.*; *Arnott's Case*, L.R. 36 Ch. D. 702; 57 L.T. 353.
- (iii.) **C. A.**—*Winding-up—Removal of Liquidator—Appeal by Liquidator—Companies Act, 1862, ss. 93, 141.*—The jurisdiction of the Court to remove a liquidator is not confined to cases of personal unfitness of the liquidator, but may be exercised whenever it appears to the Court that such removal would be for the benefit of the persons interested in the assets. A liquidator may appeal from the decision of the Judge removing him.—*E. p. Charlesworth*; *re Adam Eytou*, L.R. 36 Ch. D. 299.
- (iv.) **Ch. D.**—*Winding-up Petition—Supervision or Compulsory Order—Wishes of Creditors—Costs—Companies Act, 1862, s. 149.*—Where a petition for compulsory winding-up is presented by a creditor, who, at the hearing, asks only for a supervision order; *Seemle*, that the Court cannot make a compulsory order against his wish, even at the request of a majority of the creditors. The creditors who asked for a compulsory order allowed their costs.—*In re Chepstow Robbin Mills Co.*, L.R. 36 Ch. D. 563; 57 L.T. 752; 36 W.R. 180.
- (v.) **C. A.**—*Extraordinary General Meeting—Summoned by Irregular Board Meeting—Competency.*—An extraordinary general meeting was summoned by the board of directors for the purpose of removing B., a director. The board meeting at which it was resolved to issue the summons was irregular, inasmuch as proper notice had not been given to B. *Held*, that nevertheless the extraordinary general meeting was competent to act.—*Browne v. La Trinidad*, L.R. 37 Ch. D. 1.

### Contempt of Court:—

- (vi.) **C. A.**—*Interference with Administration of Justice—Judge in Chambers—Abusive Language.*—After the hearing of an application before the Judge in Chambers one of the solicitors engaged used abusive language to the solicitor for the other side in the hall adjoining the Judge's Chambers, and at the entrance to the building shook his fist in the other solicitor's face. *Held*, that such conduct was an interference with the administration of justice, and that the Court could commit for contempt.—*In re Johnson*, L.R. 20 Q.B.D. 68; 57 L.J. Q.B. 1; 36 W.R. 51.
- (vii.) **C. A.**—*Probate Division—Subpoena to bring Script into Registry—Non-contentious Matter.*—A writ of subpoena was issued in a non-contentious matter directing R., a solicitor, to bring into the Probate Registry a script which was stated to be, but which was not, in fact, in his possession or control. *Held*, that his non-compliance, and his failure to follow the usual practice, with which he was acquainted, of filing an affidavit to explain his non-compliance, were not contempts of Court; and that he could not be ordered to pay the costs of an order directing him to attend for examination, or of his attendance.—*Rawlings v. Emmerson*; *in re Emmerson*, 57 L.J. P. 1.

*See Ecclesiastical Law*, p. 39, ix.

**Contract:—**

- (i.) **C. A.**—*Agreement not to carry on Profession of Surgeon—Acting as Assistant.*—A., on becoming assistant to X. and Y., surgeons at N., agreed that he would not at any time carry on the profession of surgeon within ten miles of N. X. and Y. dissolved partnership, and both continued to carry on their profession at N. X. engaged A. as his assistant. • *Held*, that X. and Y. had a joint and several interest in the agreement, and that Y. could sue alone for a breach of it. *Held*, also, that there had been a breach by A. in becoming assistant to X.—*Palmer v. Mallet*, L.R. 36 Ch. D. 411.
- (ii.) **Ch. D.**—*Agreement to enter into Agreement—Damages.*—Agreement between A. and B. that A. should enter into an agreement with X. for a lease, at a certain rent, for such term and subject to such covenants as X. should approve. *Held*, that B. was entitled to damages for breach of the agreement.—*Foster v. Wheeler*, L.R. 36 Ch. D. 695; 36 W.R. 267.

**Copyright:—**

- (iii.) **C. A.**—*Pictures—Copies made before Registration—Sale after Registration—Copyright Act, 1862.*—Defendant was employed by plaintiffs to make copies of a drawing of which they had the copyright. Defendant made other copies before the plaintiffs registered their copyright, which he sold after registration. *Held*, that there was an implied contract that defendant should make no copies other than those for the plaintiffs, and that, independently of statute, plaintiffs were entitled to an injunction and damages. *Held*, also, that plaintiffs could recover damages, but not penalties, in respect of the sale after registration. Decision of Q. B. D. (see Vol. 12, p. 96, ii.) reversed.—*Tuck v. Priester*, L.R. 19 Q.B.D. 629; 36 W.R. 93.

**Costs:—**

- (iv.) **Ch. D.**—*Administration Action—Useless Proceedings—Delay—R.S.C., 1883, O. xlv., rr. 1, 11.*—Where an administration action was commenced, in 1882, by a person whose interest was a share in the residue which he had purchased for £55, and on the certificate being made, in 1887, it appeared that the action had been unnecessary and of no benefit; *held*, that the plaintiff must pay all the costs since October 24, 1883; and that, in the taxation of the costs up to that time, regard must be had to the delay which had occurred, all parties to have liberty to apply as to costs.—*Goldring v. Lancaster; in re Ormston*, 36 W.R. 216.
- (v.) **C. A.**—*Administration Action—Delay—Reference for Inquiry—Costs prior to October 24, 1883—Action then Pending—O. lxx., r. 11.*—Two orders for taxation of costs having been previously made, which did not direct payment of the costs, *held* (1), that such orders did not preclude a reference being made to the taxing-master to inquire and report as to delay; (2), that such reference might be made where the costs are payable out of a fund; (3), that it might be made, as to costs incurred, prior to October 24, 1883.—*Brown v. Burdett*, 36 W.R. 225.
- (vi.) **Q. B. D.**—*Costs up to and after Payment into Court—Effect of Discontinuance—R.S.C., O. xxvi., r. 1; O. lxx., r. 1.*—Defendant was ordered to pay money into Court as to part of a claim, and received leave to defend as to the remainder. After issue joined the plaintiff discontinued the action. *Held*, that the costs were in the discretion of the Court, and that the plaintiff was entitled to his costs up to the time of payment into Court.—*Suckling v. Gabb*, 36 W.R. 175.



- (i.) **Ch. D.**—*Interlocutory Motion—Proceeding to Trial.*—Where the plaintiff by an interlocutory motion obtains the relief he seeks in the action, he must apply to the defendant to have the case disposed of on motion, and otherwise will not be allowed the extra costs of unnecessarily proceeding to trial.—*Sonnenschein v. Barnard*, 57 L.T. 712.
- (ii.) **C. A. & Q. B. D.**—*Recovery of less than £20—County Courts Act, 1867, s. 5—R.S.C., 1883, O. lxx., r. 12.*—The plaintiffs in an action having recovered the sum of £3, an order was made by the Judge in chambers that the plaintiffs should have their costs, to be taxed according to the County Court scale B. *Held*, that the order was good.—*Neaves v. Spooner*, 36 W.R. 62 & 257.
- (iii.) **P. D.**—*Judicial Separation—Reconciliation—Interim Injunction against Husband—Costs.*—A judicial separation having been pronounced, an injunction was granted restraining the husband from dealing with certain of his property. The parties having been reconciled, the Court refused the application of the wife's solicitor for the injunction to be continued till a receiver was appointed, or his costs were paid.—*Hawes v. Hawes*, 57 L.T. 374.
- (iv.) **Q. B. D.**—*Reference—R.S.C., 1883, O. lxx., r. 12—Scale.*—An action on a partnership account was by consent referred. The terms were that all matters in difference between the parties in the action were to be referred, and that the costs of the action should abide the award. Afterwards a matter of account outside the action was submitted to the arbitrator. The arbitrator awarded the plaintiff £40 on his claim, and £14 on the subsequent account. *Held*, that the plaintiff had recovered less than £50 in the action, and therefore costs on the County Court scale were recoverable.—*Emmett v. Heyes*, 36 W.R. 237.
- (v.) **C. A.**—*Taxation—Discretion of Taxing Master—Separate Sets of Costs—Refreshers—R.S.C., 1883, O. lxx., r. 27, sub-rr. 29, 48.*—Decision of Ch. D. (see Vol. 12, p. 96, vi.) affirmed.—*Boswell v. Coaks*, L.R. 36 Ch. D. 444; 36 W.R. 209.
- (vi.) **Ch. D.**—*Taxation—Objections—Shorthand Notes—Appeal.*—On a summons to vary the taxing master's certificate a point not raised in the written objections cannot be taken. The disallowance of the costs of shorthand notes in taxing the costs in the Court below does not affect the question of their allowance in taxing the costs of an appeal. Where shorthand notes taken by the successful party in the Court below were used by the appellant on the appeal, such use is conclusive that they were required for the appeal.—*Nation v. Hamilton*, 57 L.T. 648.
- See Practice, p. 48, vi., vii., viii.; p. 49, i., ix., x. Administration, p. 29, ii. - Husband and Wife, p. 41, iv., v.

#### Counsel:—

- (vii.) **C. A.**—*Authority—Compromise.*—It is within the general authority of counsel conducting a cause in Court to consent to a compromise, unless the client has, to the knowledge of the opposite party, withdrawn his authority.—*Matthews v. Munster*, L.R. 20 Q.B.D. 141; 36 W.R. 178.

**Covenant.**—See Landlord and Tenant, p. 43, ii. Lunatic, p. 44, vi. Restraint of Trade, p. 53, i.

#### Criminal Law:—

- (viii.) **C. C. R.**—*Commitment for Trial—Power of Justices—Division of County.*—The justices acting for one petty sessional division of a county may commit for trial a person charged with an offence committed in another division of the same county.—*Reg. v. Beckley*, 52 L.T. 716; 36 W.R. 160.

- (i.) **Q. B. D.**—*Conspiracy and Protection of Property Act, 1875, s. 7*—*Intimidation—Threatening to “Watch and Beset.”*—An intimation conveyed in a letter to an employer that his shop would be picketed, in language so threatening as to make such employer afraid, amounts to intimidation, whether or not the picketing amounts to an unlawful watching or besetting.—*Judge v. Bennett*, 36 W.R. 103.
- (ii.) **C. C. R.**—*False Pretences—Word Competition—Advertisement.*—Prisoner advertised a word competition for prizes, the entrance fees to be sent to the Rev. A. at X. There was no such person at the address given: *Held* that the prisoner might be convicted of obtaining by false pretences the money sent as entrance fees.—*Reg. v. Randell*, 57 L.T. 718.
- (iii.) **C. C. R.**—*Larceny—Welsher.*—A welsher may be convicted of larceny, if the jury are satisfied that he had no intention, whatever might be the result of the race, of returning the money deposited with him on making the bet.—*Reg. v. Buckmaster*, 57 L.T. 720.
- (iv.) **H. L.**—*Restitution of Goods Obtained by False Pretences—Sale in Market Overt—Larceny Act, 1861, s. 10.*—Decision of C. A. (see Vol. 12, p. 62, iv.) affirmed.—*Bentley v. Vilmont*, L.R. 12 App. Cas. 471; 57 L.J. Q.B. 18.

#### Damages:—

- (v.) **C. A.**—*Sale of Goods—Warranty—Sub-sale—Costs of Defending Action.*—Goods were sold with a warranty, the vendors knowing that the purchasers intended to resell them with a similar warranty. On use by the sub-purchasers it appeared that the goods did not answer the warranty, which could not have been discovered earlier. The vendors maintaining that the goods answered the warranty, the purchasers unsuccessfully defended an action by the sub-purchasers. *Held*, that the vendors were liable in damages for the costs of such action, as well as for the amount recovered from the purchasers as damages.—*Hammond v. Bussey*, L.R. 20 Q.B.D. 79.

See *Ship*, p. 54, vii.

#### Domicil:—

- (vi.) **C. A.**—*Abandonment of Domicil of Choice—Intention.*—A person does not lose his domicil of choice merely by forming the intention of leaving it. he must actually leave it with the intention of leaving it permanently. —*Chalmers v. Wingfield*, L.R. 36 Ch. D. 400.

#### Easement:—

- (vii.) **C. A.**—*Light—Prescription—Agreement—Prescription Act, s. 3.*—A lease of a house for 999 years demised the house with all rights and appurtenances “except rights (if any) restricting the free use of any adjoining land, or the appropriation of such land for building purposes.” *Held*, not to be such an agreement as to prevent the lessee from acquiring a right to light.—*Mitchell v. Cantrill*, 36 W.R. 229.
- (viii.) **Ch. D.**—*Right of Way—Implied Grant—Way formed during Unity of Possession.*—Where a defined way is formed during unity of possession over a property, which is afterwards severed and granted to different persons, the right of using the way, as it is then used, may pass by implication, though it is a way of convenience only, and not of necessity, and though the general words of the conveyance are not sufficient to pass such right.—*Brown v. Alabaster*, 36 W.R. 155.

#### Ecclesiastical Law:—

- (ix.) **C. A.**—*Suspension—Contempt—Imprisonment after Expiration of Suspension—Church Discipline Act, 1840.*—Decision of Q. B. D. (see Vol. 13, p. 8, iii.) reversed.—*E. p. Bell Cox*, L.R. 20 Q.B.D. 1; 36 W.R. 209.



- (i.) **Consistory Court.**—*Faculty—Communion Table—Side Chapel.*—For the sake of convenience and to save expense, a faculty was decreed for the erection of a communion table in a side chapel of a church in which there was already a communion table.—*In re Holy Trinity Church*, L.R. 12 P.D. 199.

**Estoppel.**—See *Infant*, p. 42, iii.

### **Executor:—**

- (ii.) **P. C.**—*Liability—Duty to Convert—Reasonable Discretion—Right of Beneficiary to Relief.*—An executor must shew that he has acted *bona fide* and exercised a reasonable discretion in liquidating the assets. Where part of the estate consisted of shares with unlimited liability, and the executors delayed conversion after the same was requested by the beneficiaries; *held*, that they were liable for the value of the shares ascertained six months after the testator's death. Any beneficiary, though only interested to the extent of a life interest in a share, may sue for relief.—*Hiddings v. De Villiers*, L.R. 12 App. Cas. 624; 57 L.J. P.C. 107.

### **Foreign Judgment:—**

- (iii.) **Ch. D.**—*Succession to Property—Comity of Courts.*—When the Court has to administer the estate of a deceased person domiciled abroad, it will have regard to any decision of the Court of the domicile with reference to rights of succession to the property of the deceased, although such decision was based on an erroneous view of English law, or was given when the whole of the facts were not before the tribunal.—*Trotford v. Blanc*, L.R. 36 Ch. D. 600; 57 L.T. 674; 36 W.R. 163.

### **Friendly Society:—**

- (iv.) **Q. B. D.**—*Secession of Lodge from District—Registry—Evidence of Secession—Friendly Societies Act, 1875, s. 11, sub-s. 10, s. 22, sub-ss. (d) (e), s. 30.*—When there is a dispute between a lodge and its district as to whether the lodge, desiring to secede from the district, has gone through the proper forms, the County Court Judge, in an action by the district against the lodge, must receive evidence of the secession, and is not precluded by the fact that the registration of the lodge as a branch of the district has not been cancelled or suspended.—*Wilkinson v. Jagger*, 36 W.R. 169.

### **Highway:—**

- (v.) **Q. B. D.**—*Liability to Repair—Urban Sanitary Authority—Highway Act, 1835—Public Health Act, 1875—Form of Indictment.*—An urban sanitary authority is not liable to a common law indictment, under the Public Health Act or any other statute, for neglecting duties conferred on them, either as surveyors of highways or as inhabitants in vestry assembled. If this liability is to be established against them in the latter capacity, it must be on an indictment preferred according to the provisions of the Highway Act, 1835. An indictment against a corporation which would not be liable to be indicted in the absence of a statute, for non-repair of a highway, is bad unless it concludes "against the form of the statute," and the objection is fatal even after verdict.—*Reg. v. Mayor, &c., of Poole*, L.R. 19 Q.B.D. 602; 56 L.J. M.C. 131; 57 L.T. 485; 36 W.R. 239.

**Husband and Wife :-**

- (i.) **Q. B. D.**—“*Desertion*”—*Non-payment of Alimony—Married Women (Maintenance in Case of Desertion) Act, 1886.*—A mere refusal by a husband to continue payment to his wife of an allowance under a separation deed is not such a “desertion” as to give the justices jurisdiction to deal with the case.—*Pape v. Pape*, L.R. 20 Q.B.D. 76; 57 L.J. M.C. 3; 36 W.R. 125.
- (ii.) **P. D.**—*Divorce—Adultery of Petitioner—Condonation—Petition Dismissed—Damages.*—In a suit by husband against wife for divorce on the ground of her adultery, the jury found that the wife had committed adultery against the co-respondent, and assessed damages against him. The wife counter-charged against her husband that he had five years before committed adultery with a domestic servant. The husband admitted the adultery, but proved condonation. *Held*, that the husband was not entitled to a divorce, or to damages. — *Story v. Story*, L.R. 12 P.D. 196; 57 L.J. P. 15; 57 L.T. 536; 36 W.R. 190.
- (iii.) **P. D.**—*Divorce—Conduct Conducing to Adultery.*—A husband who has left his wife, and, eight years afterwards, discovers her adultery, will not be allowed a divorce on a petition filed five years later.—*Heyes v. Heyes*, L.R. 13 P.D. 11.
- (iv.) **P. D.**—*Divorce - Costs—Separate Property.*—Where a married woman, who had a decree *nisi* pronounced against her on account of her adultery, is proved to be absolutely possessed of separate property, she will not be allowed her costs, and will, on the application of the petitioner, be ordered to pay the costs of the suit.—*Milward v. Milward*, 57 L.T. 569.
- (v.) **P. D.**—*Divorce - Wife's Petition - Dismissal - Costs.*—On a wife's petition for divorce, the charges of cruelty were withdrawn, and those of adultery being found not proved, the petition was dismissed; *held*, that the husband ought not to be ordered to pay the wife's costs.—*Thompson v. Thompson*, 57 L.T. 374.
- (vi.) **Ch. D.**—*Gift by Husband to Wife for her Separate Use—Policy on Life of Wife—Voluntary Settlement.*—A policy having been effected on the life and in the name of the wife of A., she, by a post-nuptial settlement, settled the policy for the benefit of A. and the children of the marriage, A. joining in the deed “for the purpose of assuring all his interest, if any.” A. predeceased his wife, having, during his life, paid all the premiums. *Held*, on the wife's death, that the policy had been intended to be, and was, the separate property of the wife at the date of the settlement, and that the settlement was therefore valid.—*Re Winn; Reed v. Winn*, 57 L.T. 382.
- (vii.) **P. D.**—*Judicial Separation—Cross-Suits for Dissolution—Adultery of both Parties—Connivance—Costs.*—In cross-suits for dissolution of marriage, the Court found both parties guilty of adultery, and that the husband had been guilty of misconduct almost amounting to connivance, and of cruelty. The Court pronounced a decree for judicial separation, with costs against the husband, and did not condemn the co-respondent in costs.—*Otway v. Otway*, L.R. 13 P.D. 12; 57 L.J. P. 6.
- (viii.) **P. D.**—*Nullity of Marriage—Variation of Settlement.*—After a decree of nullity of marriage, and on a petition for variation of the settlement, the Court ordered the settled property to be transferred to the parties who had brought it into settlement, and freed from the trusts of the settlement.—*Leeds v. Leeds*, 57 L.T. 373.

- (i.) **C. A.**—*Separation Deed—Covenant not to Molest—Allowance under Deed—Subsequent Adultery—Alimony pendente lite.*—By a separation deed the husband covenanted to pay the wife an allowance, she covenanting not to molest him. The husband ceased to pay the allowance, alleging breach of the covenant not to molest. The wife having presented a petition for judicial separation on the ground of adultery by the husband both before and after the deed; *held*, that the husband ought to pay alimony *pendente lite*.—*Wood v. Wood*, 57 L.J. Ch. 1; 57 L.T. 746; 36 W.R. 33.

### Infant:—

- (ii.) **Ch. D.**—*Custody—Limit of Age—Guardianship of Infants Act, 1886, s. 5.*—The Court has jurisdiction to make such order as it thinks fit as to the custody of an infant without fixing any limit of age.—*Re Witten*, 57 L.T. 336.
- (iii.) **Ch. D.**—*Infants Settlement Act, 1855—Estoppel.*—On proposals being carried in for the marriage settlement of a ward of Court, the fact that some of her real property had been sold to the School Board was inadvertently overlooked, and a fund in Court representing the purchase money was omitted from the settlement. *Held*, that the infant on attaining twenty-one was estopped from setting up a title to the fund in Court against the trustees of the settlement.—*Mills v. Fox*, 57 L.J. Ch. 56; 36 W.R. 219.

### Injunction:—

- (iv.) **Ch. D.**—*Bond—Condition.*—The defendant on entering the plaintiffs' employment, executed a bond to them, conditioned to be void if he should not after quitting their employment enter into similar employment within the time and distance specified. The defendant having broken the condition; *held*, that the condition in the bond was sufficient evidence of an agreement to sustain the plaintiffs' claim for an injunction.—*London and Yorkshire Bank v. Pritt*, 56 L.J. Ch. 987; 36 W.R. 135.

### Justice of the Peace:—

- (v.) **Q. B. D.**—*Disqualification—Interest—Summoned as Witness.*—A magistrate had visited, as a medical attendant, a person who alleged that he had been assaulted. He advised his patient not to prosecute, and afterwards received a communication from the person alleged to have committed the assault, offering an apology, and expressing a desire for a settlement. It was alleged that he would be a necessary witness for the prosecution. *Held*, that he was not disqualified from sitting at the hearing of a summons for the alleged assault, either on the ground of interest, or because he might be called as a witness.—*Reg. v. Farrant*, L.R. 20 Q.B.D. 58; 36 W.R. 184.

### Landlord and Tenant:—

- (vi.) **Q. B. D.**—*Sheriff—Claim for Arrears of Rent—Liability of Sheriff for Removal of Goods—Measure of Damages—Forced Sale—8 Anne, c. 14, s. 1.*—In an action against the sheriff for removing goods taken in execution without paying the landlord a year's rent due, the measure of damages is *prima facie* the amount of rent due. The sheriff may prove, in mitigation of damages, that the value of the goods removed was less than the amount of rent due, but it is not enough for him to shew that on a forced sale they produced less than such amount.—*Thomas v. Mirehouse*, L.R. 19 Q.B.D. 563; 56 L.J. Q.B. 653; 36 W.R. 104.
- (vii.) **C. A.**—*Restrictive Covenant—"Shall not Suffer"*—*Construction of.*—"Shall not suffer" an offensive trade to be carried on on demised

premises, means "shall not authorise or sanction," rather than "shall hinder or prevent." E., having purchased a sub-lease of premises, with notice of a covenant in the head lease that the lessee and his assigns should not suffer an offensive trade to be carried on, granted a sub-lease to M. with a similar covenant. M. commenced an offensive trade. *Held*, that no injunction should be granted against E., there being no evidence that he had authorised or sanctioned the offensive trade; and that E. ought not to be compelled to bring an action of ejectment against M.—*Hall v. Erwin*, 36 W.R. 84.

- (i.) **C. A.**—*Tenantable Repair*.—Where, under an agreement for a lease of a dwelling-house, the tenant was to leave the house in tenantable repair, *held*, that the landlord was not entitled to damages for breach of the agreement on the footing that the tenant ought to paper and paint and leave the house in the same condition as when he took it.—*Crawford v. Newton*, 36 W.R. 54.
- (ii.) **Ch. D.**—*Under-lease—Covenant to Pay Collateral Sum—Not Running with Land*.—A covenant in an under-lease by the under-lessee for himself, his heirs, executors, administrators, and assigns, to pay all taxes, &c., in respect of the premises demised, and also all such taxes, &c., as should be payable by the lessor, his executors, administrators, and assigns, in respect of premises therein mentioned, being part of the premises comprised in the original lease and excepted from the under-lease; *held*, not to run with the land.—*Gower v. Postmaster-General*, 57 L.T. 527.

#### Lands Clauses Act :—

- (iii.) **C. A.**—*Incorporation with Special Act—Private Charity—Costs*.—Decision of Ch. D. (see Vol. 12, p. 34, iii.) affirmed.—*Re Ston College: c.p. Mayor of London*, 57 L.T. 743.
- (iv.) **C. A.**—*Premises Injuriouslly Affected—Change of Premises—Compensation*.—Decision of Q. B. D. (see Vol. 13, p. 11, v.) reversed.—*Reg. v. Poulter*, L.R. 20 Q.B.D. 132; 36 W.R. 117.

#### Libel :—

- (v.) **Ch. D.**—*Interlocutory Injunction—Newspaper Report—Letter from Correspondents*.—The Court will not grant an interlocutory injunction to restrain the publication of a libel in a case where it would be very difficult to frame such an order as would not prejudice the trial. Where a newspaper has published a report of the general meeting of a company, and subsequently inserts letters from correspondents containing statements damaging to the company; *held*, that the publication of the letters could not be justified by the fact that they contained no imputations which had not been publicly made at the general meeting as reported.—*The Liverpool Household Stores Association, Limited, v. Egerton Smith & Co. and John Lovell*, 57 L.T. 770.
- (vi.) **C. A.**—*Literary Criticism—Fair—Privilege*.—In an action for libel contained in a public criticism on literary work the questions for the jury are, what is the meaning of the word used, and does such meaning come within "fair criticism"? Imputations on the character of the author, or an account of the work so false as to amount to an actual misdescription are outside the limits of "fair criticism." The criterion is the expression of the opinion of the critic, not the opinion itself. No question of privilege arises in reference to public criticism.—*Merivale v. Carson*, 36 W.R. 231.

**Limitations :—**

- (i.) **Ch. D.**—*Defaulting Trustee—Heir-at-Law.*—The heir-at-law of a defaulting trustee cannot set up the statute of limitations as a defence against a claim for breach of trust.—*Gillard v. Lawrenson; re Burge*, 57 L.T. 364.
- (ii.) **Ch. D.**—*Maintenance of Pauper Lunatic—Arrears—Lunatic Asylums Act, 1853, ss. 94, 104.*—The right of the guardians of the poor to recover, out of the estate of a person who has been maintained as a pauper lunatic, the cost of his maintenance, is limited to six years' arrears.—*Eggleton v. Newbegin*, L.R. 36 Ch. D. 477; 56 L.J. Ch. 907; 57 L.T. 390; 36 W.R. 69.
- (iii.) **Ch. D.**—*Tenants in Common—Receipt of Rents by Father as Bailiff for Son.*—A father entered into receipt of the rents of a property, to which he and his two sons were entitled as tenants in common in unequal shares. One of such sons was of full age, the other an infant. The father received the rents without acknowledging the title of his sons for more than 12 years. Held, that as regards the infant's share, the father must be held to have received the rents as bailiff, and that the statute did not run; but that as regards the other share, the statute took effect.—*Hobbs v. Wade*, L.R. 36 Ch. D. 553.

**Local Government :—**

- (iv.) **Q. B. D.**—*Public Health Act, 1875, ss. 4, 150—Word "Street."*—The word "street" in section 150 includes any of the words set out in the interpretation clause which are not inconsistent with the subject-matter of the section; and such extended meaning, if so applicable, must be read into the word street throughout the section, without regard to the particular work to be done under it. The question whether the place in dispute comes within the interpretation clause is for the Judge; he may properly ask the Jury whether the place is a "street" in the popular acceptance of the term.—*Jowett v. Idle Local Board*, 36 W.R. 138.
- (v.) **Q. B. D.**—*Repair of Roadway—Highways and Locomotives Amendment Act, 1878, s. 13—Tramways Act, 1870, s. 28—Blackburn and Over Darwen Tramways Act, 1870, ss. 47, 50.*—The county authority is liable to repay to the borough road authority one half of the share of the expenses of repairing a main road which, by agreement, made according to a local act, with a tramway company using the road, the borough authority has taken on itself.—*Darwen (Mayor of) v. Lancashire Justices*, 36 W.R. 140.

**Lunatic :—**

- (vi.) **Ch. D.**—*Agreement to Grant Lease—Lessor of Unsound Mind—Benefit of Covenant in Lease.*—A lessor having entered into agreement to grant leases according to a draft form, became of unsound mind. Held, that though an order could be made under the Trustee Act, 1850, vesting the legal term in the lessee, the lessee could not get the benefit of a covenant for quiet possession, contained in the draft lease.—*Cowper v. Harmer*, 57 L.T. 714.
- (vii.) **C. A.**—*Jurisdiction of Judge of Appeal Court to make Orders in Chancery Division.*—The letter of the Lord Chancellor requesting the Judges of the Court of Appeal sitting in Lunacy to act as additional Judges of the Chancery Division, is not limited to petitions under the Trustee Acts, but applies to all applications in lunacy which require the exercise of the jurisdiction of the Chancery Division.—*In re Platt*, L.R. 36 Ch. D. 410.

**Married Woman :—**

- (i.) **Ch. D.**—*Separate Estate—Prior Covenant to Settle—Married Women's Property Act, 1882, ss. 5, 19.*—A marriage settlement made in 1870, contained a covenant by the husband for the settlement of future acquired property. The wife in 1883 became absolutely entitled without any limitation to her separate use to a share of residuary estate under a will. *Held*, that the wife's share was bound by the covenant.—*Hancock v. Hancock*, 36 W.R. 166.
- (ii.) **C. A.**—*Committal—Judgment against Separate Estate—Debtors' Act, 1869, s. 5—Married Women's Property Act, 1882.*—A married woman cannot be committed to prison for non-payment of a judgment debt recovered against her, payable out of her separate estate.—*Scott v. Morley*, L.R. 20 Q.B.D. 120; 57 L.J. Q.B. 43; 36 W.R. 67.
- See Bankruptcy, p. 32, iv.*

**Master and Servant :—**

- (iii.) **Q. B. D.**—*Employers Liability Act, 1880—"Plant"—"Defect"—"Workman"—Volenti non fit Injuria.*—In an action by the driver of a cart against his employer, the owner of the cart and horse, for injuries caused by the horse which was vicious to the knowledge of the plaintiff. *Held* (1) that the plaintiff was a "workman," (2) that the horse was "plant," (3) that its vice was a "defect." The plaintiff having objected to drive the horse, and having been told by his foreman that he must do so, and that the employer would be liable for any accident, *held*, that the jury might on the facts find for the plaintiff, for there was evidence of negligence on the part of the foreman, and the circumstances did not shew conclusively that the plaintiff undertook the risk voluntarily.—*Yarmouth v. France*, L.R. 19 Q.B.D. 647; 57 L.J. Q.B. 7.
- (iv.) **Q. B. D.**—*Negligence of Fellow Workman—Superintendence—Foreman of Gang—Employers Liability Act, 1880, s. 1, sub-ss. 2, 3, s. 8.*—The foreman of a gang of labourers, who is himself working with the gang, is not a person for whose negligence, causing injuries to one of the gang, the employer is liable.—*Kellard v. Rooke*, L.R. 19 Q.B.D. 585.

**Mines :—**

- (v.) **Q. B. D.**—*Waterworks—Compensation for Future Injury—Waterworks Clauses Act, 1847, ss. 6, 25.*—*Held*, that under section 25 of the Waterworks Clauses Act, 1847, compensation is payable to a mineral owner for future inability to work out his minerals owing to the formation of a reservoir; the extent of such inability having been clearly ascertained.—*Holliday v. Mayor of Wakefield*, 57 L.T. 559.

**Mortgage :—**

- (vi.) **C. A.**—*Assignment of After-Acquired Property—Divisible Contract.*—Decision of Ch. D. (see Vol. 12, p. 67, viii.) affirmed.—*Coombe v. Carter*, L.R. 36 Ch. D. 348; 56 L.J. Ch. 981.
- (vii.) **C. A.**—*Mortgage by Sub-Demise—Trade Fixtures.*—Words which are sufficient in a conveyance in fee to pass trade fixtures are also sufficient to pass them in a demise. By a mortgage by way of sub-demise, a leasehold mill and certain specified fixtures were conveyed, and the general words included "all fixtures." *Held*, that trade fixtures passed by the general words, which were not restricted to fixtures *ejusdem generis* with those specified.—*Southport and West Lancashire Bank v. Thompson*, 36 W.R. 113.

(i.) **Ch. D.**—*Redemption—Mortgagee in Possession—Annual Rents—Costs.*—On taking the accounts in a redemption action against a mortgagee in possession, annual rents will be made against the mortgagee from the time when the principal moneys due on the mortgage have been fully paid by the surplus of rents received over interest. A mortgagee who claims to retain the property after he has been fully paid, must pay the costs of a redemption action, although the judgment at the trial directed an account of what was due to him for taxed costs.—*Ashworth v. Lord*, L.R. 36 Ch. D. 545.

(ii.) **Q. B. D.**—*Notice by Mortgagee to Tenant—New Tenancy.*—Where the mortgagee has given notice to the tenant of the mortgaged property to pay the rent to him, and such notice has been complied with, the proper inference is that a new tenancy from year to year has been created from the date of the notice between the tenant and the mortgagee.—*Underhay v. Read*, 36 W.R. 75.

. See Practice, p. 49, vii., viii., ix., x.

### **Municipal Corporation:—**

(iii.) **Ch. D.**—*Application of Borough Fund—Municipal Corporations Act, 1882, s. 15, sub-s. 4, 140, 141, 143.*—A municipal corporation passed resolutions that a sum should be paid to the mayor by way of remuneration, and that he should be requested to take such steps as he might deem proper for the due celebration of the Queen's Jubilee. On a motion at the relation of certain burgesses, to restrain the corporation from applying any part of the borough fund in the celebration of the Jubilee, held, that the Municipal Corporations Act, 1882, had not been violated, and that no interlocutory injunction should be granted.—*A.-G. v. Corporation of Blackburn*, 57 L.T. 385.

### **Municipal Government:—**

(iv.) **Q. B. D.**—*Bye-Law—Validity—Street Music—5 & 6 Will. IV., c. 76, s. 90.*—A bye-law made by the town council of a borough providing a penalty for any person who, in any street, should sound or play upon any musical or noisy instrument, or should sing, recite, or preach in any street, without licence from the mayor; held, to be unreasonable and *ultra vires*.—*Munro v. Watson*, 57 L.T. 366.

### **Nuisance:—**

(v.) **Ch. D.**—*Small-Pox Hospital.*—The defendants fitted-up, as a small-pox hospital, a cottage adjacent to the plaintiff's property. The evidence being conflicting, a medical man was appointed to report. He reported that the hospital was a danger, though not a great danger, to the persons inhabiting the houses on the plaintiff's property. Held, that the plaintiff had made out a case of appreciable injury to property, and was entitled to an injunction.—*Bendelow v. Guardians of Wortley*, 36 W.R. 168.

(vi.) **Ch. D.**—*Riparian Owner—Several Contributors to Nuisance.*—Where a stream is polluted by several manufacturers, a riparian owner, injured by such pollution, can maintain his action against one of the polluters alone, and it is no defence on the part of the defendant to shew that his contribution to the nuisance is unappreciable.—*Blair v. Deakin; Eden v. Deakin*, 57 L.T. 522.

### **Partnership:—**

(vii.) **Ch. D.**—*Winding-up—Receiver and Manager Appointed by Partners—Remuneration.*—Where partners have appointed a receiver and manager to wind up their business, without any stipulation as to his remunera-



tion, he is entitled to a *quantum meruit*, and not to remuneration according to the scale for official receivers, nor under the 5 per cent. rule mentioned by Lord Langdale, which no longer exists.—*Prior v. Bagster*, 57 L.T. 760.

**Patent :—**

- (i.) **C. A.**—*Combination—Novelty of Parts—Infringement—Acquiescence—Estoppel.*—It is not necessary for the validity of a patent for a combination, that the specification should shew what parts are new; but the patentee cannot succeed in an action for an infringement, which consists in taking part only of a combination, unless his specification claimed the part so taken as new. A patent for a combination of known mechanical contrivances producing a new result is infringed by a machine producing the same result, and being a combination of mechanical equivalents of the said contrivances. A patentee is not estopped from suing purchasers of a machine infringing his patent by conduct which does not amount to a representation that such machine was not an infringement.—*Procter v. Bennis*, L.R. 36 Ch. D. 740; 57 L.J. Ch. 11; 57 L.T. 662.
- (ii.) **C. A.**—*Communication from Abroad—Patents, Designs, and Trade Marks Act, 1883, ss. 5, 26, sub-s. 4 (c) (d), sub-s 8, ss. 35, 101, Sched. I., form A—Patent Rules, 1883, r. 27, Sched. II., form A.*—Decision of Ch. D. (see Vol. 12, p. 108, i.), affirmed.—*Re Avery's Patent*, 36 L.R. Ch. D. 307; 56 L.J. Ch. 1007; 57 L.T. 506; 36 W.R. 249.
- (iii.) **P. C.**—*Prolongation—Accounts.*—On a petition for the prolongation of a patent, the accounts of the patentee did not distinguish between the profits of the patented article and those of other articles manufactured by the patentee, nor between the profits of the earlier and later years of the term. *Held*, that the accounts were not satisfactory, and further time to amend the accounts was refused.—*In re Yates', and Kellett's Patent*, 57 L.J. P.C. 1.
- (iv.) **H. L.**—*Specification—Ambiguity—Validity.*—Decision of C. A. (see Vol. 10, p. 107, v.) reversed.—*Badische Anilin und Soda Fabrik v. Lecinstein*, L.R. 12 App. Cas. 710.
- (v.) **C. A.**—*Threats of Proceedings by Patentee—Injunction to Restrain Threats—Interlocutory Injunction—Balance of Convenience—Patents, Designs, and Trade Marks Act, 1883, s. 32.*—The action mentioned in the proviso to section 32 need not be against the person who is suing to restrain threats; an action for infringement honestly brought with reasonable diligence against any person who has been threatened will, if duly prosecuted, satisfy the proviso. In considering whether such an action is brought with due diligence, the period to be looked at is the time of issuing the threats, not the time when the party bringing the action first knew of the acts which he alleges to be infringements. To obtain an interlocutory injunction, the plaintiff must make out a *prima facie* case, and unless he does so an interlocutory injunction will not be granted on the mere consideration of the balance of convenience and inconvenience. *Seemle*, in an action to restrain a patentee from issuing threats, the validity of his patent may be disputed.—*Challender v. Royle*, L.R. 36 Ch. D. 425; 56 L.J. Ch. 995; 57 L.T. 743.

See Practice, p. 50, ix.

**Poor Law :—**

- (vi.) **Q. B. D.**—*Settlement—Child under Sixteen—Widowed Mother—Divided Parishes Act, 1876, s. 35.*—A child, under sixteen, whose father is dead and whose mother has married again, neither father nor mother having



acquired any derivative settlement, has no other settlement than her birth settlement.—*Amersham Union v. City of London Union*, L.R. 20 Q.B.D. 103; 57 L.J. M.C. 6; 36 W.R. 141.

- (i.) **Q. B. D.**—*Settlement—Residence—Widow—Divided Parishes Act, 1876, s. 34.*—A pauper widow had continuously resided in the parish of G. with her husband for three years before his death, and after his death she continued to reside there for three months. *Held*, that she had acquired a settlement in G.—*Medway, Guardians v. Bedminster Guardians*, 57 L.J. M.C. 4.

See Limitations, p. 44, ii.

### Practice :—

- (ii.) **P. C.**—*Appeal—Leave to Appeal—Question of General Importance.*—Where the determination of a case will not be decisive of any general principle of law, the Privy Council will not give leave to appeal from a unanimous judgment of the Court below, on the ground that the questions involved are of great importance to the parties, or calculated to attract public attention.—*Dumoulin v. Langtry*, 57 L.T. 317.
- (iii.) **C. A.**—*Appeal—Leave to Appeal after Time.*—Three out of six directors sold their shares to the company, and received the price out of the funds of the company. In the winding-up the six directors were jointly and severally ordered to replace the sums, with liberty to those who had not received them to apply as to the liability of those who had. On the last day for appealing the three who had received them appealed, without the knowledge of the other three. *Held*, that leave to appeal after time ought to be given to the other three.—*In re Clayton Mills Manufacturing Co.*, L.R. 37 Ch. D. 28.
- (iv.) **C. A.**—*Appeal—Postponement—Sufficient Reason.*—An application to postpone the hearing of an appeal which is in the general list will not be granted as a matter of course, though made with the consent of all parties, but a sufficient reason must be shewn. The fact that negotiations for a settlement are pending is such a sufficient reason.—*Bird v. Andrew*, 36 W.R. 1.
- (v.) **C. A.**—*Amendment—Restoring Allegation Struck Out—Time.*—Leave given to amend a statement of claim by inserting an allegation which had been struck out by order of the Ch. D., although the time for appealing against such order had passed, the order having been over-ruled in a subsequent case.—*Kurtz v. Spence*, L.R. 36 Ch. D. 770.
- (vi.) **C. A.**—*Costs—Interest on—R.S.C., 1883, O. xlii., r. 14—Appendix H.*—Where an action was dismissed with costs before, but the taxation of costs was not completed till after, the Rules of 1883 came into operation; *held*, that interest on the costs ran from the date of the judgment. The forms in Appendix H. can only be varied to make them in accordance with the judgment or order.—*Boswell v. Coaks*, 57 L.T. 742; 36 W.R. 65.
- (vii.) **C. A.**—*Costs—Security for—O. lviii., r. 15.*—Where there is a *prima facie* case of abuse by the appellant of the process of the Court, and the costs of previous proceedings have not been paid, security for costs of appeal will be ordered, though there is no evidence of the appellant's want of means.—*Weldon v. Maples*, 57 L.T. 672; 36 W.R. 154.
- (viii.) **Ch. D.**—*Costs—Security for—Winding-up Petition—Petitioner Abroad.*—A person resident abroad, who has obtained judgment in an undefended action against a company, will not, on presenting a winding-up petition, be ordered to give security for costs.—*In re Contract and Agency Corporation*, 57 L.J. Ch. 5.

- (i.) **C. A.**—*Costs—Unpaid—Stay of Proceedings.*—Proceedings may be stayed where the plaintiff is acting vexatiously in not complying with an order to pay the costs of a previous action.—*Re Wickham; Marony v. Wickham*, 57 L.T. 468.
- (ii.) **Q. B. D.**—*County Court—Action for Ejectment—“Legal Notice to Quit”—Jurisdiction—County Courts Act, 1856, s. 50.*—An action of ejectment cannot be brought in a County Court except when the interest of the tenant has determined by time or by a legal notice to quit, which implies a determination of the lease by law, and not under a private contract, as in the case of a forfeiture for breach of covenant.—*Friend v. Shaw*, 36 W.R. 236.
- (iii.) **Q. B. D.**—*County Court—Appeal from—Agricultural Holdings Act, 1883, s. 46—County Courts Act, 1867, s. 13.*—An appeal lies from the decision of a County Court judge given in the matter of a dispute heard by him under the Agricultural Holdings Act, 1883.—*Hanmer v. King*, 57 L.T. 367.
- (iv.) **Q. B. D.**—*County Court—Interpleader—Amount not Exceeding £20—Appeal—19 & 20 Vict., c. 108, s. 68—30 & 31 Vict., c. 142, s. 13.*—In an interpleader proceeding in the County Court, where neither the money claimed, nor the value of the goods claimed, nor the proceeds thereof, exceed £20, the Judge cannot give leave to appeal, and his judgment is final.—*Collis v. Lewis*, 57 L.T. 716.
- (v.) **Q. B. D.**—*County Court—Remitted Action—Claim Reduced by Admission—19 & 20 Vict., c. 108, s. 26.*—A plaintiff's claim for £220 having been reduced by his admission of the defendant's counter-claim to £17, held, that the action was rightly remitted to the County Court.—*Lewis v. Lewis*, L.R. 20 Q.B.D. 56; 57 L.J. Q.B. 38; 57 L.T. 715; 36 W.R. 63.
- (vi.) **Ch. D.**—*Evidence—Cross-Examination of Deponent—Discretion—R.S.C., Ord. xxxviii., r. 1.*—The Court or a judge has a discretion as to making an order for the attendance for cross-examination of a person making an affidavit.—*La Trinidad v. Broune*, 36 W.R. 138.
- (vii.) **Ch. D.**—*Foreclosure—Possession—Originating Summons.*—A mortgagee who has obtained a foreclosure judgment nisi by originating summons may, in default of payment, obtain an order for delivery of possession, even though the summons did not ask for delivery.—*Best v. Applegate*, L.R. 37 Ch. D. 42; 57 L.T. 599.
- (viii.) **Ch. D.**—*Foreclosure—Particulars of Receipts.*—The mortgagee, defendant to a redemption action, counter-claimed for an account and foreclosure, or sale, alleging that the mortgage comprised (1) certain commissions, (2) a sum also secured by bills of exchange, and (3) a sum due on open account, and stating that he had received divers sums in respect of the bills of exchange and open account. Held, that the mortgagee ought to give particulars of such receipts.—*Kemp v. Goldberg*, L.R. 36 Ch. D. 505.
- (ix.) **Ch. D.**—*Foreclosure—Claim for Personal Payment—Action or Summons—Costs.*—A mortgagee in possession brought his action for foreclosure, asking (*inter alia*) for an order for personal payment, which was refused. Held, that the mortgagee was entitled to the costs of the action, and not merely to those of a summons.—*Brooking v. Skeicis*, 36 W.R. 215.
- (x.) **Ch. D.**—*Foreclosure—Receiver—Costs—Action or Summons.*—A receiver may be appointed in a foreclosure action commenced by summons. Where the plaintiff brought an action asking for a receiver, and the facts were complicated, held, that a statement of claim was not necessary, and that only the costs of a summons should be allowed.—*Barr v. Harding*, 36 W.R. 216.

- (i.) **Q. B. D.**—*Frivolous and Vexatious Action—Power to Stay.*—The Queen's Bench Division has an innate and inherent authority to dismiss or stay a frivolous or vexatious action, distinct from the power conferred by the Rules of Court with respect to objectionable pleadings.—*Blair v. Cordner*, 36 W.R. 64.
- (ii.) **Q. B. D.**—*Indemnity—Co-Defendant—Ord. xvi., r. 55.*—Where a defendant is by special agreement entitled to an indemnity from a co-defendant he may sign judgment against his co-defendant for the amount of his own liability before actually paying anything in discharge of it.—*English and Scottish Trust v. Flatau*, 36 W.R. 238.
- (iii.) **Q. B. D.**—*Joint and Several Debt—Adding Defendant—R.S.C., 1883, O. xvi., r. 11.*—In an action for a partnership debt the defendant has a right to add as co-defendant the person who is jointly liable with himself, although the plaintiff objects to the addition.—*Pilley v. Robinson*, 36 W.R. 269.
- (iv.) **Ch. D.**—*Married Woman—Action on a Contract—Separate Estate—Motion for Judgment.*—Where a married woman is defendant to an action on a contract and has made default in delivering of a defence, the Court will not, on a motion for judgment, make an order against her separate estate, unless the statement of claim contains an allegation that she has separate estate.—*Tetley v. Griffith*, 57 L.T. 673; 36 W.R. 96.
- (v.) **C. A.**—*Palatine Court—Service out of Jurisdiction—Leave to Issue Writ—Chancery of Lancaster Rules, 1884—O. ii., r. 4; O. xii., rr. 1, 7.*—Before an application is made to the Court of Appeal for leave to serve a writ issued out of the Palatine Court upon a defendant who is out of the jurisdiction of that Court, the leave of the Vice-Chancellor to issue the writ must be obtained. Counsel, on making such application, ought to inform the Court that the leave of the Vice-Chancellor has been obtained.—*Walker v. Dodds*, 36 W.R. 133.
- (vi.) **Ch. D.**—*Parties—Addition of Defendant—Ex parte Motion—R.S.C., 1883, O. xvi., r. 11.*—An application to add a defendant to an action cannot be made *ex parte*.—*Hall v. Colbeck*, 36 W.R. 259.
- (vii.) **Q. B. D.**—*Particulars—Slander—Persons Present.*—A plaintiff in an action for slander said to have been uttered in a public room may be ordered to deliver "the best particulars he can give of the persons present" when the slanders were uttered.—*Williams v. Ramsdale*, 36 W.R. 125.
- (viii.) **Ch. D.**—*Partition Action—Sale out of Court—Form of Order.*—When a sale out of Court is ordered in a partition action, the reserved bid and the auctioneer's remuneration must be fixed by the chief clerk and mentioned in the order, and the purchase-money must be paid directly into Court.—*Pitt v. White*, 57 L.T. 650.
- (ix.) **Ch. D.**—*Patent—Action to Restrain Threats—Particulars of Objections—List of Patents.*—In an action to restrain threats of proceedings for infringement of patents, the plaintiffs alleged that the patents on which the defendants relied in making the threats were bad. *Held*, that the defendants must deliver a list of the patents on which they intended to rely, as a condition precedent to obtaining particulars of objections.—*Union, Electrical Power and Light Co. v. Electrical Power Storage Co.*, 36 W.R. 263.

- (i.) **Ch. D.**—*Payment out—Costs—Incumbrancer.*—Where there is a fund in Court representing the purchase-money of a leasehold taken by a railway company, the lessor's right of re-entry for non-payment of rent is an incumbrance which the company must see discharged, and the lessor, having received notice from the company of a petition for payment out, has a right to appear at the hearing, and to have his costs paid by the company.—*Re London Street & L. C. & D. R. Act, 1881*, 57 L.T. 673.
- (ii.) **Ch. D.**—*Pleading—Striking Out Statement of Claim—No Reasonable Cause of Action—R.S.C., 1883. O. xxv., rr. 1, 4—Foreign Government—Title of.*—Where the pleadings disclose a case which the Court is satisfied will not succeed, they should be struck out and the action put an end to. The Court will not investigate the title of a *de facto* foreign Government, or attempt to distinguish between a Government *de facto* and a Government *de jure*.—*Republic of Peru v. Peruvian Guano Co.*, L.R. 36 Ch. D. 489; 56 L.J. Ch. 1081; 57 L.T. 337; 36 W.R. 217.
- (iii.) **Ch. D.**—*Pleading—Statute of Limitations.*—The Statute of Limitations cannot be set up as a defence on further consideration, when it has not been pleaded, though the pleadings state the facts on which the defence is raised.—*Gillard v. Lawrenson; re Burge*, 57 L.T. 364.
- (iv.) **Ch. D.**—*Pleading new Defence Arisen since Action Brought—Confession of Defence—Signing Judgment—Discretion of Court—R.S.C., 1883. O. xxiv., r. 3.*—A pleading of a ground of defence which has arisen since action brought will not entitle the plaintiff to sign judgment for his costs, unless such pleading amounts to a waiver of the pleas founded on matters which had occurred before action brought.—*Harrison v. Marquis of Abergavenny*, 57 L.T. 360.
- (v.) **Ch. D.**—*Pleading—Defence—Striking Out Irrelevant Matter—R.S.C., 1883, O. xix., r. 27.*—In an action to restrain a railway company from subscribing towards the funds of the Imperial Institute, as being an act *ultra vires*, paragraphs in the statement of defence stating the objects of the Institute, and the practice of railway companies to subscribe to exhibitions, regattas, race meetings, and other objects calculated to encourage traffic; *held*, not to be so utterly irrelevant that they ought to be struck out.—*Tomkinson v. S. E. Ry.*, 57 L.T. 358.
- (vi.) **Q. B. D.**—*Receiver—County Court—Equitable Execution—Order on Trustees—Prohibition.*—Trustees were authorised by a will to pay and apply the income of a fund to and for the benefit of A., at their discretion, and when they should think proper. Judgment having been recovered against A. in a County Court, the Judge appointed a receiver of the income of the fund, and ordered the trustees to make him certain periodical payments. *Held*, that there was no jurisdiction to make the order, and that a writ of prohibition must go.—*Reg. v. Lincolnshire County Court Judge*, 36 W.R. 174.
- (vii.) **P. D.**—*Service—Foreign Company—Writ.*—A writ was issued against a foreign company having no place of business in England, no address of the defendants was inserted, and it was served on an officer of the defendants, who was temporarily in England. *Held*, that the writ must be set aside.—*The W. A. Scholten*, L.R. 13 P.D. 8; 57 L.J. P. 4.
- (viii.) **Q. B. D.**—*Service out of Jurisdiction—Action for Price of Goods—O. xi., r. 1 (e).*—Contract by plaintiff carrying on business in the jurisdiction to supply machinery out of the jurisdiction, no place of payment being specified. *Held*, that payment ought to be made at the plaintiff's place of business, and that service out of the jurisdiction ought to be allowed.—*Robey & Co. v. Snaefell Mining Co.*, 36 W.R. 224.

- (i.) **Q. B. D.**—*Substituted Service—Domicile out of Jurisdiction—R.S.C.*, O. ix., r. 2, O. x., r. 1, O. xi., r. 2.—Where effectual personal service cannot be made on a person "domiciled or ordinarily resident in Ireland," the Court will not allow substituted service to be made.—*Hillyard v. Smith*, 36 W.R. 7.
- (ii.) **Ch. D.**—*Trial by Jury—Action Assigned to Chancery Division—Counter-claim—Joinder of Cause of Action not so Assigned—R.S.C.*, O. xxxvi., rr. 3, 4, 5, 6.—Where the plaintiff's action is one assigned to the Chancery Division, and the defendant by counter-claim joins a cause of action which would, as a separate action, be properly tried by a jury, the plaintiff is not entitled as of right to a trial by jury.—*Lynch v. Macdonald*, 36 W.R. 136.
- (iii.) **H. L.**—*Verdict against Evidence—Power of Court of Appeal—R.S.C.*, Ord. lviii., r. 4.—*Quære*, whether the Court of Appeal, when satisfied that the verdict is against evidence can, instead of ordering a new trial, give the proper judgment.—*Toulmin v. Millar*, L.R. 12 App. Cas. 746.

### Principal and Agent:—

- (iv.) **Ch. D.**—*Manager of Trading Company—Promissory Note.*—A promissory note made by the manager of a trading company, and purporting to be signed on behalf of the company, does not bind the company, unless it is necessary for the business of the company, or is in the ordinary course of its business. Where the manager of a company's business abroad, to induce X. to enter into a contract, procured Y. to deposit a sum of money in a bank in the name of X. as a guarantee, and gave Y. as security a promissory note signed "in representation of the company," held, that the note did not bind the company.—*In re Cunningham & Co.; Simson's Claim*, L.R. 36 Ch. D. 532.
- (v.) **H. L.**—*Sale of Agent's Own Property—Rescission of Contract—Company Winding-up—Directors—Misfeasance.—Decision of C. A. (see Vol. 10, p. 114, vii.) affirmed.*—*Carendish-Bentinck v. Fenn*, L.R. 12 App. Cas. 652.

### Principal and Surety.—See Will, p. 58, v.

### Public Health Act:—

- (vi.) **Q. B. D.**—*Municipal Bye-Law—Open Space Behind Dwelling-House—Distance Across—Opposite Property.*—A municipal bye-law provided that every person erecting a dwelling-house 25 feet in height should provide an open space in rear thereof, and should cause the distance across the open space between the dwelling-house and the opposite property at the rear to be at least 20 feet. In a case where the open space in rear of a dwelling-house of 25 feet in height was bounded by a public street, held, that the street was the "opposite property," and that a breach of the bye-law had been committed, the house being less than 20 feet from the street.—*Jones v. Parry*, 57 L.T. 492.

### Railway Company:—

- (vii.) **Q. B. D.**—*Arbitration—Agreement—Railway Commissioners—Regulation of Railways Act, 1873, s. 8.*—By an agreement between two railway companies it was provided that all differences arising therefrom should be referred to arbitration. By an Act subsequently passed, the agreement was "confirmed and made binding." Held, that the right to refer differences was derived from the agreement itself, that a difference arising from the agreement was not "required or authorised to be referred under the provisions of any general or special Act," and that the Railway Commissioners had no jurisdiction to undertake an arbitration on such a difference.—*Reg. v. M. R.*, L.R. 19 Q.B.D. 540; 56 L.J. Q.B. 585; 57 L.T. 619; 36 W.R. 270.

**Restraint of Trade:—**

- (i.) **C. A.**—*Covenant to Retire “so far as the Law Allows”*—*Personal Covenant*.—A covenant to retire from a trade “so far as the law allows,” is not enforceable. A covenant not to trade so as to affect A. is a covenant personally with A., and is not assignable. Decision of Ch. D. (see Vol. 12, 115, vii.) reversed.—*Davies v. Davies*, L.R. 36 Ch. D. 359; 56 L.J. Ch. 962; 36 W.R. 86.
- (ii.) **C. A.**—*Rule of Society not to Employ Servants of other Members*—*Trade Union Act, 1871, s. 23*.—A rule of a society formed for the protection of a trade to the effect that no member should employ a servant who had quitted the service of another member without the consent of his late employer till after the expiration of two years: *Held*, unreasonable, in restraint of trade, and void. *Seem*, that a rule protecting members against information gained by servants being improperly communicated to other members, might be valid, if reasonably framed.—*Mineral Water Bottle Trade Protection Socy. v. Booth*, L.R. 36 Ch. D. 465; 57 L.T. 573.

**Revenue:—**

- (iii.) **H. L.**—*Probate Duty—Lunatic—Accumulations of Personal Estate—Investment in Realty—Conversion*.—Decision of C. A. (see Vol. 11, p. 95, i.) reversed.—*A.-G. v. Marquis of Ailesbury*, L.R. 12 App. Cas. 672.

**Scotch Law:—**

- (iv.) **H. L.**—*Sea-shore—Prescriptive Title—Acts of Ownership—Exclusive Possession*.—A title to the fore-shore as against the Crown may be acquired by beneficial possession for the statutory time. Such acts of ownership as might have been expected in the case of a grantee from the Crown, will establish a title by prescription against the Crown. Absolutely exclusive possession is not necessary.—*Lord Advocate v. Young*, L.R. 12 App. Cas. 544.

**Settlement:—**

- (v.) **C. A.**—*Accumulation for Benefit of Mortgagees—Power of Owner in Fee to Determine Accumulation*.—A settlement of land limited a term of years to trustees, on trust to set aside and accumulate a yearly sum to discharge mortgages on the land settled. *Held*, that the mortgagees, though not parties to, or specifically mentioned in, the settlement, were *cestuis-que-trust* and entitled to the benefit of the accumulations, and that the trust could not be put an end to by a person becoming owner in fee subject to the term.—*Fitzgerald v. White*, L.R. 37 Ch. D. 18; 57 L.T. 706.

**Settled Estate:—**

- (vi.) **Ch. D.**—*Improvements—Charge Payable by Instalments—Capital Moneys in hands of Trustees—Settled Land Act, 1882—Settled Land Acts Amendment Act, 1887*.—Where improvements such as are authorised by the Act of 1882 have been effected on settled lands, and paid for by means of a charge repayable in instalments, consisting partly of capital and partly of interest, capital moneys in the hands of trustees may be applied in discharge of such parts of the instalments as represent capital, but the interest must be kept down by the tenant for life.—*Re Lord Sudley's Settled Estates*, 36 W.R. 162.

**Sewers:—**

- (vii.) **C. A.**—*Vesting in Local Authority—Alteration of Sewerage—Liability for Expenses—Public Health Act, 1875, ss. 13, 15, 18, 150, 207*.—Decision of Q. B. D. (see Vol. 12, p. 116, iv.), affirmed.—*Bonetta v. Twickenham Local Board*; *Holmes v. Twickenham Local Board*, L.R. 20 Q.B.D. 63; 57 L.J. M.C. 1; 36 W.R. 50.



**Sheriff:—**

- (i.) **C. A.**—*Liability of Under-Sheriff after Death of Sheriff—Action in Tort and Contract — Waiver.*—Decision of Q. B. D. (see Vol. 13, p. 20, iii.) affirmed.—*Gloucester Banking Co. v. Edwards*, L.R. 20 Q.B.D. 107; 36 W.R. 116.

See Landlord and Tenant, p. 42, vi.

**Ship:—**

- (ii.) **P. D.**—*Anchorage—Damage to Oyster-Bed.*—A pilot in charge of a ship by compulsion is liable for anchoring the ship in a place which was not the usual place of anchorage, whereby damage was done to an oyster-bed of the existence of which the pilot knew. The ship is not liable if the master took all reasonable means to remove his ship after he was aware of the oyster-bed.—*The Octavia Stella*, 57 L.T. 632.
- (iii.) **H. L.**—*Bill of Lading—Perils of the Sea—Negligence—Onus of Proof.*—Decision of C. A. (see Vol. 12, p. 17, i.) reversed.—*Wilson v. Owners of Cargo per "Xantho,"* L.R. 12 App. Cas. 503; 56 L.J. P. 116; 57 L.T. 701.
- (iv.) **H. L.**—*Bill of Lading—Exceptions—"Damages and Accidents of the Seas."*—Decision of C. A. (see Vol. 12, p. 46, i) reversed.—*Hamilton and Co. v. Pandorf & Co.*, L.R. 12 App. Cas. 518; 57 L.J. Q.B. 24; 57 L.T. 726.
- (v.) **Q. B. D.**—*Charter-Party—Demurrage—Strike—Weather Permitting.*—The exception in a charter-party relieving the charterer from payment of demurrage in case of "hands striking work," does not apply to a case of abandonment of work by men through dread of cholera. Where shipments are to be made "weather permitting," sea weather is meant, and demurrage is not saved where weather causes delay in bringing the cargo to the port of loading.—*Stephens v. Harris*, 57 L.T. 618.
- (vi.) **P. D.**—*Collision—Tyne Navigation Rules; Arts. 19, 20, 22—Vessel Crossing River.*—The duty imposed on vessels crossing the Tyne not to cause obstruction, injury, or damage to other vessels, does not make a crossing vessel necessarily responsible in case of collision with a vessel going up or down.—*The Thetford*, 57 L.T. 455.
- (vii.) **P. D.**—*Damages—Interest—Action Transferred to Admiralty Division.*—The practice of the Admiralty Division, by which interest is allowed on damages from the time when the claim arose, extends to actions over which the Admiralty Court had no jurisdiction before the Judicature Acts, and also to actions transferred to the Admiralty Division for the purpose of the assessment of damages by the Registrar and merchants.—*The Gertrude*, L.R. 12 P.D. 204; 56 L.J. P. 106; 36 W.R. 191.—*The Baron Aberdare*, L.R. 12 P.D. 204; 36 W.R. 191.
- (viii.) **Q. B. D.**—*Insurance—Mutual Association—Policy Taken by Managing Owner—Liability of Co-Owners.*—The managing owner of a ship took out a policy on it in a mutual insurance association. The policy stipulated that without prejudice to the rights and remedies of the company against the person or persons effecting the insurance, as a member or members of the company, in respect of the insurance, the assured should pay to the company all the contributions which the company were entitled to call upon the person or persons effecting the insurance, as a member or members of the company to pay to the company in respect of the insurance. Held, that the owners of the ship were liable to the association for the contributions.—*The Ocean Iron Steamship Insurance Association, v. Leslie*, 57 L.T. 722.

- (i.) **H. L.**—*Insurance—Material Facts—Ignorance of Assured.*—Decision of C. A. (see Vol. 11, p. 120, v.) reversed.—*Blackburn v. Vigors*, L.R. 12 App. Cas. 531; 57 L.T. 730.
- (ii.) **H. L.**—*Insurance—General Words—Perils Insured Against.*—Decision of C. A. (see Vol. 11, p. 120, ii.) reversed.—*Thames & Mersey Marine Ins. Co. v. Hamilton & Co.*, L.R. 12 App. Cas. 484; 56 L.J. Q.B. 626; 57 L.T. 695.
- (iii.) **C. A.**—*Pilotage—Port of Havre.*—Decision of P. D. (see Vol. 12, p. 79, vii.) affirmed.—*The Augusta*, 57 L.T. 326.
- (iv.) **P. D.**—*Practice—Collision—Both to Blame—Limitation of Liability—Owners of Cargo.*—An action by the *B.* against the *K.* was settled by agreement on the basis of both ships being to blame. The owners of cargo on board the *B.* then sued the *K.* for damages. The *K.* commenced an action for limitation of liability, and the statement of claim mentioned the agreement, and admitted that the *K.* was partly to blame. The owners of cargo on board the *B.* did not traverse this allegation, and a decree for limitation of liability was made. Held, that the owners of cargo on board the *B.* were not precluded by their pleadings or otherwise from proving for their whole loss, but that they must first prove that the *K.* was alone to blame, and an issue was directed.—*The Karo*, 57 L.J. P. 8.
- (v.) **P. D.**—*Practice—Reference—Affidavit—Cross-Examination.*—On a reference to the Registrar and merchants, the Registrar has a discretion whether he will give effect to the affidavit of one of the parties who resides abroad, and declines to attend for cross-examination.—*The Parisian*, 57 L.J. P. 13.
- (vi.) **P. D.**—*Practice—Collision—Sale of Plaintiff's Ship.*—No order will be made for the sale of a ship which is not in the hands of the Court.—*The Wexford*, L.R. 13 P.D. 10; 57 L.J. P. 6.

**Solicitor :—**

- (vii.) **Ch. D.**—*Costs—Conducting a Sale—General Order, Sched. I., Part 1, r. 11, Sched. II.*—Where an auctioneer is employed and paid by the client, work done by the vendor's solicitor in relation to the conduct of the sale is not covered by the scale fee for deducing title and completing conveyance, but the solicitor is entitled to charge for it according to the old system as altered by Sched. II.—*Re Faulkner*, L.R. 36 Ch. D. 566; 56 L.J. Ch. 1011; 57 L.T. 342; 36 W.R. 59.
- (viii.) **C. A.**—*Costs—Taxation—Sale by Auction—Scale Fee—Auctioneer paid by Client—General Order, Aug., 1882, clause 2, Sched. I., Part 1, r. 11.*—Where a sale is by public auction, and the auctioneer's commission is paid by the client, the solicitor is only entitled to the fee for deducing title, and is not entitled to charge for other work done in connection with the sale.—*In re Faulkner* (see ante) over-ruled.—*In re Newbould*, 57 L.J. Q.B. 41; 36 W.R. 161.
- (ix.) **Ch. D.**—*Costs—Conveyancing Business—Election—Solicitor to Trustees—General Order, rr. 6, 8.*—The notice of election as to remuneration for conveyancing business arising in an action must be given by the solicitor before undertaking the business. After having done any work which would be covered by the scale fee—e.g., discussed with the client the mode of sale and questions relating to the title—it is too late to elect. *Semble*, a solicitor acting for several trustees must give notice of election to all.—*Metcalf v. Blencowe*, 36 W.R. 137.



(i.) **Ch. D.**—*Costs—Sale by Auction—“Conducting Fees”—General Order Ord. 4, Sched. I., Part 1, r. 11.*—On a sale by auction where the auctioneer is paid by the vendor, and the solicitor has charged the scale fee for deducing the title and conducting the sale, the taxing master ought to allow the scale fee for deducing title and also a *quantum meruit* for solicitor's work done by them and mentioned in their bill, which is not covered by the fee for deducing title.—*In re Pearce and Ellis*, 57 L.T. 753; 36 W.R. 61.

(ii.) **Q. B. D.**—*Costs—Interest on Disbursements and Costs—Demand from Client—Solicitors Remuneration Act, 1881, s. 5, General Order VII.*—The delivery of a solicitor's bill is equivalent to a demand for payment, and the solicitor is entitled to interest on the amount allowed on taxation from the expiration of one month after such delivery.—*Blair v. Cordner*, L.R. 19 Q.B.D. 516; 56 L.J. Q.B. 612; 36 W.R. 109.

See Attachment, p. 31, i., ii.

### Specific Performance:—

(iii.) **Ch. D.**—*Damages—Jurisdiction—Lord Cairns' Act—Judicature Act.*—The Court has now power to give a plaintiff damages for breach of an agreement, without the necessity for the plaintiff shewing that he is entitled to specific performance.—*Elmore v. Pirrie*, 57 L.T. 333.

### Stoppage in Transitu:—

(iv.) **Q. B. D.**—*Goods Bought for Shipment—Delivery on Board.*—Where the purchaser of goods ordered the vendor to consign the goods “to the Darling Downs, to Melbourne, loading in the East India Docks”; held, that the transit was not at an end on the delivery of the goods on board the ship, the shipowner being the purchaser's agent, not to hold, but to forward, the goods.—*Bethell v. Clark*, L.R. 19 Q.B.D. 553; 57 L.T. 627; 36 W.R. 185.

### Summary Jurisdiction:—

(v.) **Q. B. D.**—*Power to State Case—Recovery of Sewers Rate—Summary Jurisdiction Act, 1879, s. 33—Summary Jurisdiction Act, 1884, ss. 7, 10.*—A justice sitting to hear a proceeding for the recovery of a sewers rate under the City of London Sewers Act, 1848, s. 194, may state a special case.—*Reg. v. Lord Mayor of London*, 57 L.T. 491.

### Trade Mark:—

(vi.) **Ch. D.**—*Registration—Old Mark—Colour—Patents, Designs, and Trade Marks Act, 1883, s. 64, sub-ss. 1 (c), 3, ss. 67, 72.*—A trade-mark registered under the Act of 1875 as an old mark, and which has only been used for coffee, must, when application is made to register it under the Act of 1883 in respect of all the goods comprised in the same class with coffee, be treated as a new mark with respect to such goods. A mark consisting of an oblong label divided into three stripes, coloured red, white, and blue respectively, and having the words “Red, White, and Blue” printed on it, cannot be registered.—*Re Hanson's Trade-Mark*, 36 W.R. 134.

### Trustee:—

(vii.) **Ch. D.**—*Appointment of New Trustees—Persons Resident Out of Jurisdiction—Appointment of Trustee at a Remuneration.*—Where all the *cestui-que-trusts* resided out of the jurisdiction, and could find no person within the jurisdiction who was willing to be a trustee except A., who had been manager of the estate at a remuneration; held, that A. should be appointed together with B. and C., who were resident out of

the jurisdiction; A. to continue to receive his remuneration for management, and B. and C. undertaking, in the event of A.'s death, not to appoint a new trustee resident out of the jurisdiction without applying to the Court.—*In re Freeman's Trusts*, 36 W.R. 71.

- (i.) **H. L.**—*Investment—Mortgage of Trade Property*.—Decision of C. A. (see Vol. 12, p. 49, vi.) affirmed.—*Leuroyd v. Whiteley*, L.R. 12 App. Cas. 727.
- (ii.) **Ch. D.**—*Investment—Negligence—Valuation—Liability—Indemnity by Co-Trustee*.—Trustees advancing money on mortgage must enquire into the correctness of the statements made by the mortgagors as to the value and nature of the property and the amount of outgoings, and are not protected by a valuation, if the valuer is not instructed to make such inquiries, or is not told that the trustees would not lend more than one-half of the value of the property. Where one of the trustees is a solicitor who is authorised to make, and has made, charges for his professional work in negotiating the loan, and has not communicated his dealings to his co-trustees, who acted on the faith that the investments had been properly investigated by him, he may be made primarily liable for the breach of trust.—*Partington v. Allen*, 57 L.T. 654.
- (iii.) **Ch. D.**—*Management of Estate—Salary*.—Where estates were devised on a trust for management during a minority, solicitor trustees being empowered to charge for business done, and a legacy being given to each trustee; *held*, that the trustees had no power to allow themselves a salary for management; and *held*, under the circumstances of the case, that the Court would not inquire whether any and what sum should be allowed to the trustees.—*Bedingfield v. D'Eye*, 57 L.T. 332.

See Bankruptcy, p. 32, vii.

### Vendor and Purchaser:—

- (iv.) **C. A.**—*Forfeiture of Deposit—Defect in Title subsequently Discovered*.—Decision of Ch. D. (see Vol. 12, p. 83, iii.) affirmed.—*Soper v. Arnold*, 57 L.T. 747; 36 W.R. 207.
- (v.) **Ch. D.**—*Restrictive Covenants—Building Estate—Rights of Purchasers against each other*.—Where, on the sale of a building estate, the purchasers enter in restrictive covenants, it is a question of fact whether the covenants were for the benefit of the vendor only or for the common benefit of the several purchasers.—*Sheppard v. Gilmore*, 57 L.J. Ch. 6; 57 L.T. 614.
- (vi.) **Ch. D.**—*Restrictive Covenant—Right of Purchaser—Building Land—Injunction*.—Where a building estate is offered for sale, subject as to some of the lots to restrictive covenants, a purchaser is entitled to the benefits of the covenants entered into by the purchasers of other lots, though the whole of the estate was not sold at once. Such a purchaser can obtain an injunction against a breach of the covenants without proving damage.—*Collins v. Castle*, L.R. 36 Ch. D. 243; 57 L.T. 764.
- (vii.) **Ch. D.**—*Sale by Auction—Dishonest Bidding—Specific Performance*.—Where, on a sale by auction by mortgagees, a person, acting in the interest of the mortgagor, and without the knowledge of the mortgagees, by making sham bids, ran up the price of the property considerably above the reserve; *held*, that the mortgagees could enforce the contract against a purchaser, who had by such dishonest bidding been induced to bid an enhanced price.—*Union Bank of London v. Munster*, L.R. 37 Ch. D. 51; 36 W.R. 72.

- (i.) **Ch. D.**—*Summons—Jurisdiction—Vendor and Purchaser Act, 1874, s. 9.*—The Court has jurisdiction to determine on summons the validity of a notice given by the vendor to rescind the contract.—*In re Jackson and Woodburn's Contract*, L.R. 37 Ch. D. 44; 57 L.T. 753.

### Voluntary Deed:—

- (ii.) **Q. B. D.**—*Assignment for Benefit of Creditors—Communication to Creditor—Onus of Proof.*—When an assignment for the benefit of creditors is set up by the trustee under the assignment against an execution creditor, it lies on the trustee to prove by affirmative evidence that the assignment has ceased to be revocable; i.e., by proving that it has been communicated to a creditor, and assented to by him.—*Adniff v. Hands*, 57 L.T. 370.

### Voluntary Settlement:—

- (iii.) **Ch. D.**—*Marriage Settlement of Widower—Consideration—Children of Former Marriage.*—A limitation in the marriage settlement of a widower in favour of his children by a former marriage is voluntary, and void against subsequent purchasers.—*In re Cameron and Wells*, L.R. 37 Ch. D. 32; 57 L.T. 645; 36 W.R. 5.

### Will:—

- (iv.) **P. D.**—*Administration de bonis non—Death of Executor—Absence of Residuary Legatee—Grant to Specific Legatee.*—On the death of the sole executor, the residuary legatee being abroad, and the residue being apparently insufficient for the payment of debts and legacies, the Court granted administration *de bonis non* to a specific legatee, without requiring the residuary legatee to be cited, or to renounce.—*In the goods of Wilde*, L.R. 13 P.D. 1; 57 L.J. P. 7.
- (v.) **Ch. D.**—*Advances—Surety.*—Testator joined with his son in promissory notes to secure payment of certain instalments of the purchase money of a business purchased by the son. He paid the first instalment in his lifetime. *Held*, an advance to the son. After the death of the testator the son executed a creditor's deed, under which the vendor proved for the unpaid purchase money, but did not receive satisfaction. The executors having paid the remaining instalments, *held*, that they were not advances, but that the executors might retain them out of the life interest of the son, or prove for them under the creditor's deed, in which case they must adopt the proof already made by the vendor.—*Whitehouse v. Edwards*, 57 L.T. 761; 36 W.R. 181.
- (vi.) **Ch. D.**—*Construction—Death Without Issue.*—Bequest to A., and if she "should die before the age of twenty-one, and at any time without issue," over. *Held*, that "without issue" means without issue living at her death.—*Clay v. Coles*, 57 L.T. 682.
- (vii.) **Ch. D.**—*Construction—"Die Without Leaving Issue."*—Bequest of personalty on trust after the death of W. for R., and in case R. died without leaving issue male for J. R. died in the lifetime of W., having had only one son, who predeceased his father. *Held*, that the gift over took effect.—*Slattery v. Bull*, L.R. 36 Ch. D. 508; 36 W.R. 265.
- (viii.) **Ch. D.**—*Construction—Gift to Class—Period of Distribution—Aggregate Fund—Income.*—The rule, that in the case of a bequest of an aggregate fund to a class of children, payable on their attaining twenty-one or marrying, the class is determined at the period of distribution, so as to exclude those coming into existence afterwards, does not apply to a similar bequest of income.—*Wenmoth v. Wenmoth*, 57 L.T. 709.

- (i.) **Ch. D.**—*Construction—Gift vested or Contingent—Direction to pay at twenty-one—Gift of Income for Maintenance.*—Gift of one equal ninth share of the income of the residue on trust to apply the same for the maintenance of A., B., and C., and as and when they should respectively attain twenty-one to pay to them in equal shares one equal ninth part of the principal. *Held*, to be contingent on the legatees attaining twenty-one.—*Re Martin*; *Take v. Gilbert*, 57 L.T. 471.
- (ii.) **Ch. D.**—*Construction—"Household Servants."*—A gift to "household servants" includes only those who boarded in the house and took their meals there.—*Re Drax*; *Savile v. Yeatman*, 57 L.T. 475.
- (iii.) **Ch. D.**—*Construction—Property at a Bank.*—A gift of "my property at" the X. Bank carries the testator's balance on his account at the bank, but not share certificates deposited there.—*Desinghe v. Beare*; *in re Pratér*, L.R. 36 Ch. D. 473; 56 L.J. Ch. 925; 57 L.T. 650; 36 W.R. 179.
- (iv.) **Ch. D.**—*Construction—Specific Devise—After-acquired Property—Wills Act, s. 29.*—Devise of "all those three freehold cottages situated in E., which I have lately purchased;" *held*, not to include a garden behind one of the cottages which was afterwards purchased by the testator, and occupied by him together with the cottage.—*Care v. Harris*, 57 L.J. Ch. 62; 57 L.T. 768; 36 W.R. 182.
- (v.) **P. D.**—*Colonial Probate—Substitution.*—A testator domiciled in Guiana appointed two executors—one resident in the colony and one in England—with power of substitution in the event of either or both being unwilling to act. The colonial executor, in accordance with the law of the colony, after acting for a period, substituted the Administrator-General of the colony. There being need of a personal representative in England, the Court granted administration with the will annexed to the attorneys of the Administrator-General, until the Administrator-General or the English executor should apply, and without requiring justifying security.—*In the goods of Black*, L.R. 13 P.D. 5.
- (vi.) **P. D.**—*Probate—Alteration.*—Where a word is found to have been written in the place of another, the Court must, if it can do so with "reasonable certainty," decide from the evidence what was the original word, and admit the will to probate with the word so decided on in place of the substituted word.—*Jeffery v. The Cancer Hospital*, 57 L.T. 600.
- (vii.) **P. D.**—*Probate—Mistake in Will—Amendment in Probate.*—Testator executed a draft of his will containing a legacy to the "Bristol Royal Infirmary." Next day he executed a fair copy, which was not read over to him, and in which by mistake "British" was substituted for "Bristol." On evidence that there was no such institution as the "British Royal Infirmary," the Court ordered the probate to be amended by substituting "Bristol" for "British."—*In the goods of Bushell*, L.R. 13 P.D. 7; 57 L.J. P. 16.
- (viii.) **P. D.**—*Probate—Attesting Witnesses Unable to Recollect—Presumption.*—A holograph codicil had an attestation clause in the proper form. The witnesses acknowledged their signatures, but could not recollect having signed the paper. There was nothing suspicious about the position of the clause or of their signatures. *Held*, that the due execution was sufficiently proved.—*Woodhouse v. Balfour*, L.R. 13 P.D. 2.
- (ix.) **Ch. D.**—*Probate—Attesting Witnesses—Proof of Handwriting.*—On proof of the handwriting of the attesting witnesses to a will containing a duo attestation clause, and executed in France by a testator domiciled

there, and on proof that the witnesses could not be found after diligent search; *held*, that the due execution of the will was sufficiently proved. —*Barendale v. De Valmer*, 57 L.T. 556.

- (i.) **P. D.**—*Probate—Codicil—Testamentary Document—Incorporation.*—A letter written by a testatrix to a friend relating to the disposal of certain articles, the writing of which was mentioned in another letter written to the executor, which second letter was duly attested as a codicil, *held*, to be incorporated in the codicil, and entitled to probate. —*Symes v. Appelbe*, 57 L.T. 599.
- (ii.) **P. D.**—*Probate—Estate in England and Belgium—Two Separate Wills—Grant of Probate of both to English Executor.*—Testator having an English domicile of origin died in Belgium possessed of personalty in England and Belgium. He left two wills in the English and Belgium forms disposing separately of his property in the two countries. The Court granted probate of both to the English executor, on the renunciation and consent of the Belgian executor, and on proof that by the law of Belgium the Belgian will deal only with property in that country.—*In the Goods of Bolton*, L.R. 12 P.D. 202; 57 L.J. P. 12.
- (iii.) **C. A.**—*Secret Trust—Admissibility of Evidence.*—Bequest to A. and B. “relying but not by way of trust, upon their applying the said sum in or towards the object or objects privately communicated to them.” *Held*, that evidence was admissible to shew the existence and nature of a secret trust.—*Re Spencer’s Will*, 57 L.T. 519.

# Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times  
Reports, and Weekly Reporter,

FOR FEBRUARY, MARCH, AND APRIL, 1888.

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## Accord and Satisfaction:—

- (i.) **C. A.**—*Cheque by Third Party for Smaller Sum—Payment of Costs without Interest.*—An action having been dismissed with costs, the defendant's solicitor received from the plaintiff's solicitor a cheque for the amount shewn by the taxing master's certificate, less a deduction on account of the certificate not being filed. After payment of the cheque the defendant's solicitor found that he was entitled to interest on the costs, and moved for production of the certificate, which he had delivered up, that a writ of execution might be issued for the interest. *Held*, that the cheque must be taken to have been received in full accord and satisfaction for the whole debt.—*Bidder v. Bridges*, L.R. 37 Ch. D. 406; 57 L.J. Ch. 300.

## Administration:—

- (ii.) **Ch. D.**—*Personal Estate—Intestacy—Next-of-Kin—Descendants—Statute of Distributions, ss. 3, 5, 6, 7.*—The division of personal estate among the descendants of an intestate is always to be *per stirpes*.—*Walker v. Gammage*, L.R. 37 Ch. D. 517; 36 W.R. 548.
- (iii.) **Ch. D.**—*Preferential Payment by Executor—Specialty Debt—Hinde Palmer's Act (32 & 33 Vict., c. 46).*—An executor may, since Hinde Palmer's Act, pay a simple contract creditor in preference to a specialty creditor.—*Re Orsmond; Drury v. Orsmond*, 58 L.T. 24.

## Arbitration:—

- (iv.) **Ch. D.**—*Appointment of Umpire—Chance.*—An arbitrator, when appointing an umpire, may not leave the result to chance. Two arbitrators having to appoint an umpire, and neither knowing the person proposed by the other, drew lots between the persons proposed. *Held*, that the appointment so made was invalid.—*Pescod v. Pescod*, 58 L.T. 76.

- (i.) **Q. B. D.**—*Invalid Appointment of Arbitrators—Umpire—Award—Order of Court—Public Health Act, 1875, s. 180.*—In an arbitration under the Public Health Act, 1875, the claimant's arbitrator was not appointed in writing under his hand. The arbitrators having appointed an umpire who made an award; *held*, that the provisions of the statute not having been complied with, the appointment of the arbitrators, and consequently their appointment of the umpire and his award, were invalid, and neither the original submission nor the appointment of the umpire nor his award could be made an order of Court.—*In re Gifford and the Bury Town Council*, L.R. 20 Q.B.D. 368; 57 L.J. Q.B. 181; 36 W.R. 468.

### **Bankruptcy :—**

- (ii.) **Q. B. D.**—*Action after Receiving Order—Staying Action—Bankruptcy Act, 1883, ss. 9, 10.*—Where an action is brought against a debtor after a receiving order has been made it ought to be stayed, unless the plaintiff can shew special reasons for allowing it to continue.—*Brownscombe v. Fair*, 58 L.T. 85.
- (iii.) **Q. B. D.**—*Appeal—Small Bankruptcy—Bankruptcy Act, 1883, ss. 104, sub-s. 2, 121—Bankruptcy Rules, 1886, r. 273 (6).*—The debtor in a small bankruptcy may appeal without leave from a refusal to grant him his discharge.—*E. p. Rankin; in re Rankin*, L.R. 20 Q.B.D. 341; 58 L.T. 120; 36 W.R. 526.
- (iv.) **Q. B. D.**—*Assignment for Benefit of Creditors—Release—Right of Proof—Bankruptcy Act, 1883, s. 4, sub-s. (a), s. 43.*—The debtor assigned his property for the benefit of his creditors. The deed provided for a rateable division of assets, and contained a release by the creditors "in consideration of the premises." The debtor was adjudicated bankrupt on the petition of a non-executing creditor, the act of bankruptcy being the execution of the deed. *Held*, that the executing creditors were entitled to prove in the bankruptcy.—*In re Stephenson; c. p. Official Receiver*, L.R. 20 Q.B.D. 540.
- (v.) **C. A.**—*Bankruptcy Notice—Final Judgment—Order for Payment of Alimony pendente lite—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—An order for the payment of alimony, *pendente lite*, is not a final judgment against the husband, so as to enable a bankruptcy notice to be presented against him for arrears due thereunder.—*In re Henderson; e. p. Henderson*, L.R. 20 Q.B.D. 509.
- (vi.) **C. A. & Q. B. D.**—*Bankruptcy Notice—"Final Judgment"—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—An order dismissing an action with costs for want of prosecution is not a "final judgment," so as to constitute the failure to comply with a bankruptcy notice founded on such order an act of bankruptcy.—*E. p. Earl of Strathmore; in re Riddell*, L.R. 20 Q.B.D. 518 & 512; 36 W.R. 304 & 532.
- (vii.) **Q. B. D.**—*Bankruptcy Notice—Name of Liquidator—Companies Act, 1862, s. 95—Bankruptcy Act, 1883, s. 4 (1) (g).*—A balance order was made against A. for calls due in the winding-up of a company. The official liquidator brought an action on the order and obtained judgment. He thereupon issued a bankruptcy notice against A. in his own name as official liquidator. *Held*, that the notice was irregular, and that a petition founded on it must be dismissed.—*E. p. Mackay; in re Shirley*, 58 L.T. 936.



- (i.) **Q. B. D.**—*Costs—Lien for—Money in Hands of Receiver—Claim for Rent—Preference.*—An order was made directing the receiver in an action which had, in consequence of the bankruptcy of both the parties, been transferred to the Bankruptcy Court, to pay the balance of moneys in his hands to the solicitor in the action in respect of his costs. A claim had been made, of which the Court was not informed, by the landlord of the bankrupt's premises, for rent due. *Held*, on an application by the receiver for directions, that the order must be varied by directing payment of the rent due, before payment to the solicitor, and that the receiver, who was the person responsible for the difficulty, must be personally liable for the costs of the application.—*E. p. Brown; in re Suffield & Watts*, 36 W.R. 303.
- (ii.) **C. A.**—*Examination of Witness—Refusal to Answer—Bankruptcy Act, 1883, s. 27.*—Where a witness is summoned for examination concerning the debtor's dealings or property, the judge is not bound to accept as conclusive his denial that he has dealt with such property, but his credibility may be tested by further questions. The witness cannot be party to an appeal against the refusal of the Court to order him to answer questions.—*In re Scharrer; e. p. Tilly*, L.R. 20 Q.B.D. 518; 36 W.R. 388.
- (iii.) **Q. B. D.**—*Fraudulent Preference—Motive of Debtor—Payment to Ease Surety—Bankruptcy Act, 1883, s. 48.*—A payment by a debtor to his creditor, with the object, not of preferring the creditor, but of easing a surety for the debt, is not a fraudulent preference.—*E. p. Official Receiver; re Mills*, 58 L.T. 235.
- (iv.) **C. A.**—*Petitioning Creditor's Debt—Amount—Costs of Abortive Execution—Bankruptcy Act, 1883, s. 6.*—The costs of an execution cannot be recovered except out of the levy, and therefore the costs of an abortive execution cannot be added to the petitioning creditor's debt, so as to make up the amount necessary to enable him to petition.—*E. p. Cuddiford; in re Long*, L.R. 20 Q.B.D. 316; 36 W.R. 346.
- (v.) **C. A.**—*Proposal for Composition—Acceptance by Creditors—Approval of Court—Bankruptcy Act, 1883, ss. 18, 23.*—Defendant agreed with the trustee of a bankrupt to purchase the bankrupt's estate, on the condition that the bankruptcy should be annulled. The creditors accepted the agreement, the resolution containing the provision that the defendant should give a bond. The agreement was approved by the Court, the order containing no reference to the bond. In an action by the trustee for specific performance, *held*, that the agreement approved by the Court was the one accepted by the creditors, and providing for a bond; that the defendant's agreement with the trustee had not been approved by the Court, and could not be enforced; and that the defendant was not estopped by the order from shewing that the agreement sought to be enforced was not the agreement approved by the Court.—*Lucas v. Martin*, 57 L.J. Ch. 261.
- (vi.) **Q. B. D.**—*Scheme of Arrangement—Approval of Court—Sale of Assets out of Jurisdiction—Bankruptcy Act, 1883, s. 18, sub-s. 6.*—A scheme for the arrangement of the affairs of merchants having a house in England and a house in South America, provided for the sale of the assets in South America to one of the partners who resided there, at about their estimated value. There was no provision for security except that the trustee was to insure the purchaser's life. The scheme was approved of by the committee of inspection, and by the official receiver. *Held*, reversing the decision of the County Court Judge, that the scheme ought to be approved by the Court.—*In re Stuniar; e. p. Smith*, L.R. 20 Q.B.D. 544.



- (i.) **Q. B. D.**—*Purchase by Creditor of Another Debt to Found Proceedings—Bond Fides—Bankruptcy Act, 1883, ss. 5, 6.*—It is no abuse of the bankruptcy laws for a creditor, whose debt is less than £50, to buy another debt, for the purpose of enabling him to commence proceedings in bankruptcy, his object being to save the debtor's estate.—*Re Baker*; *c. p. Baker*, 58 L.T. 233; 36 W.R. 558.
- (ii.) **C. A.**—*Scheme of Arrangement—Consent of Debtor to Entry of Judgment—Bankruptcy Act, 1883, ss. 18, 28, sub-s. 6.*—A scheme of arrangement provided that the debtor should consent to judgment being entered against him by the trustee for the full amount of the debts provable, such judgment to have the same effect, and to be enforceable in the like manner and to the like effect, as though the debtor had been adjudged bankrupt under the proceedings, and the Court had granted him an order of discharge conditional upon his consenting to such entry of judgment, and such judgment had been accordingly entered. *Held*, that the judgment could not be enforced either at common law, or under the Act, or by agreement, and that the scheme, therefore, was illusory, and ought not to be approved.—*E. p. Bischoffsheim*; *in re Aylmer*, L.R. 20 Q.B.D. 258; 57 L.J. Q.B. 168.
- (iii.) **C. A.**—*Title of Trustee—Payment by Garnishee under Void Judgment—Debtors Act, 1869, s. 27.*—The defendant in an action consented to a judge's order for judgment against him. A garnishee order was made on the judgment, and the garnishee paid the debt attached within twenty-one days from the date of the judge's order. The judge's order was not filed within 21 days, and the judgment was thereby avoided. The defendant having become bankrupt, *held*, that the trustee was entitled to recover the money paid from the judgment creditor, as money received to his use. In the absence of fraud the payment by the garnishee discharges him, though the judgment is afterwards set aside.—*E. p. Brown*; *in re Smith*, L.R. 20 Q.B.D. 321; 57 L.J. Q.B. 212; 36 W.R. 405.

### **Bastardy :—**

- (iv.) **Q. B. D.**—*Affiliation Order—Service of Summons—Last Place of Abode—Bastardy Law Amendment Act, 1872, s. 4.*—A. resided at Sunbury from September, 1886, to April, 1887, when he went to Southampton to "better himself." He returned to Sunbury "for his things" on the 14th of May, and on the 19th of May he sailed for the West Indies. A bastardy summons was left for him at the house in which he had resided at Sunbury, on the 19th of May. *Held*, that the service was good.—*Reg. v. Lee*, 36 W.R. 415.

### **Bill of Sale :—**

- (v.) **C. A.**—*After Acquired Property—Statutory Form—Bills of Sale Act (1878) Amendment Act, 1882, ss. 4, 5, 9.*—A bill of sale assigned the chattels scheduled, "together with all other chattels and things the property of the mortgagor now in and about the said premises, and also all chattels and things which may, at any time during the continuance of the security, be in or about the same or any other premises of the mortgagor (to which the said chattels or things, or any part thereof may have been removed), whether brought there in substitution for, or renewal of, or in addition to, the chattels and things hereby assigned." *Held*, that the bill of sale was void for want of conformity with the statutory form.—*Kelly v. Kellond*, L.R. 20 Q.B.D. 569; 58 L.T. 268; 36 W.R. 868.

- (i.) **Q. B. D.**—*Covenant Necessary for Maintenance of Security—Absence of Power to Seize in Default—Bills of Sale Act (1878) Amendment Act, 1882, s. 7.*—A bill of sale contained a covenant by the grantor to keep insured and in repair the chattels assigned, with power for the grantee in default to insure and repair, the expenses being a charge on the chattels; and it was agreed that the grantee might seize on the happening of any of the events mentioned in the Bills of Sale Act, 1882, s. 7. *Held*, that the bill of sale was good.—*Topley v. Grosbie*, L.R. 20 Q.B.D. 350; 36 W.R. 352.
- (ii.) **Ch. D.**—*Debenture—Agreement to Issue Debentures—Bills of Sale Act (1878) Amendment Act, 1882, s. 17.*—An agreement between a company and a lender, whereby the company agreed to pay the lender £600 with interest, and charged certain hereditaments with the same, and agreed to execute a legal mortgage, and to issue debentures to the extent of £600 secured on all goods and chattels of the company; *held*, to be a debenture. Any document which either creates a debt or acknowledges it is a debenture.—*Levy v. Abercorris Slate and Slab Company*, L.R. 37 Ch. D. 260; 57 L.J. Ch. 202; 58 L.T. 218; 36 W.R. 411.
- (iii.) **Ch. D.**—*Debenture—Registration—Personal Chattels—Trade Machinery—Bills of Sale Act, 1878, ss. 4, 5, 8—Bills of Sale Act, 1882, s. 17.*—A brick making company deposited with their bankers their title deeds to beds of coal and clay with a memorandum stating that the deposit was to secure all moneys owing or be owing, and containing an agreement to execute a legal mortgage. There was no acknowledgment of any specific debt nor any agreement for payment. *Semble*, that the memorandum was not a debenture. The company were not the owners of the surface, but had a right to use the same for working the minerals, and had erected machinery of the kind excluded by section 5 of the Act of 1878. *Held*, that such articles were not personal chattels within the meaning of the Act, and that the memorandum did not require registration as a bill of sale.—*Topham v. Greenside Glazed Fire-Brick Company*, L.R. 37 Ch. D. 281; 58 L.T. 274; 36 W.R. 464.
- (iv.) **Q. B. D.**—*Register—Rectification—Affidavit—Omission of Particulars—Bills of Sale Act, 1878, s. 10, sub.-ss. 2, 12, 14.*—The Judge can amend the register when the omission or misstatement of the name, residence, or occupation of any person is accidental, &c., but cannot, where the affidavit filed with the registrar is defective with reference to the residence or occupation of an attesting witness, allow an affidavit to be filed supplying the defect.—*Crew v. Cumings*, L.R. 20 Q.B.D. 535.
- (v.) **C. A.**—*Statutory Form—Invalidity—Other Property than Personal Chattels.*—Decision of Q. B. D. (see Vol. 13, p. 33, v.) reversed.—*E. p. Burne; in re Burdett*, L.R. 20 Q.B.D. 310; 36 W.R. 345.
- (vi.) **Q. B. D.**—*Evidence—Certificate of Registration—Covenant to produce Receipts for Rent—Qualification—Bills of Sale Act, 1878, s. 10—Bills of Sale Act, 1882, s. 7 (4).*—The production, at the hearing of an interpleader issue, of a bill of sale, with the certificate of registration, is no evidence that the proper affidavit was filed; but the bill of sale should not be held void, but an adjournment for production of evidence should be granted. A bill of sale containing a covenant to produce receipts for rent, without any such qualification as is contained in the Bills of Sale Act, 1882, but with a proviso that the goods should not be seized for any cause other than those specified in the Act, *held*, not to be void for want of conformity with the statutory form.—*Turner v. Culpan*, 36 W.R. 278.

**Bond :—**

- (i.) **Ch. D.—Real Estate—Lien.**—The obligor of a bond died in 1812, having, by his will, charged his real estate with payment of his debts. The devisee of the testator settled the real estate, the legal estate in which was outstanding in a mortgagee, by a settlement which recited the will. *Held*, that the obligee of the bond was entitled to a valid equitable lien on the real estate, as against the persons claiming under the settlement.—*Justice v. Fooks*, 57 L.T. 868.

**Charity.**—*See Practice*, p. 84, i.

**Colonial Appeal :—**

- (ii.) **P. C.—Practice—Question of Fact—New Trial.**—Where there has been a trial by jury of a question of fact, and evidence on both sides has been properly submitted, and the jury have found a verdict warranted by the evidence, and not in itself unreasonable or unfair, the judicial committee will not, except under very exceptional circumstances, set such verdict aside.—*Commissioners for Railways v. Brown*, 57 L.T. 895.

**Colonial Law :—**

- (iii.) **P. C.—Cape of Good Hope—Fidei-Commissum—Construction—Compromise.**—Bequest of residue to testator's daughter "if and when she shall attain the age of twenty-five years or marry, the same to be bound with *fidei-commissum*," giving, in effect, a life interest to the daughter and the capital in remainder to her children. The daughter brought an action against the executors which she compromised; she afterwards married, and a second action was brought on behalf of her children. *Held*, that the daughter inherited as heir until she attained twenty-five or married, and after that as heir bound by a *fidei-commissum*; and that the compromise, which did not effect an alienation of property, was binding on the children. *Semble*, that in the Cape of Good Hope the Court does not take the responsibility of judging for those who are incapable of judging for themselves, as is the practice of the Court of Chancery.—*De Montmort v. Broers*, 58 L.T. 198.
- (iv.) **P. C.—Lower Canada—Code of Civil Procedure, Art. 19—Action brought in Name of Another—Trustee.**—The provision that "no person can use the name of another to plead" prevents actions in the names of agents or mandatories, authorised to act for others, but having no estate in the subject of the action, but not actions in the names of trustees in whom the subject of the trust is vested for the benefit of third persons, with duties to perform in the protection or realisation of the trust estate. Therefore trustees for the benefit of creditors, deriving their title from the official assignee under the Insolvent Act, may sue in their own names.—*Porteus v. Reynar*, 57 L.J. P.C. 28; 57 L.T. 891.

**Company :—**

- (v.) **Ch. D.—Borrowing Powers—Debentures—Charge on Particular Asset.**—By the articles of association, the directors of a company had power to borrow on security at their discretion, provided that the aggregate amount borrowed should not, without the assent of an extraordinary meeting, exceed half the paid up capital. The directors were authorised by an extraordinary meeting to raise, and did raise, a named sum by the issue of debentures for a special purpose. *Held*, that this gave the directors an independent power of borrowing, and that the issue of debentures did not exhaust the borrowing power contained in the articles, so that a charge on a particular asset was valid.—*E. v. Harrison; Ward v. Royal Exchange Shipping Co.*, 58 L.T. 174.

- (i.) **Ch. D.** — *Director — Exclusion by Co-Directors.* — A director of a company is entitled to an *interim* injunction against his co-directors, in an action to restrain them from excluding him from acting as a director, although, in the opinion of the directors he is unfit to be a director by reason of alleged misconduct. — *Kyshe v. Alturas Gold Co.*, 36 W.R. 496.
- (ii.) **Ch. D.** — *Inspection of Register — Right of Stockholder — Companies Clauses Act, 1845, ss. 45, 63 — Injunction — Mandamus.* — A company is bound to allow a stockholder to inspect the whole of its register, and has no right to require him to state his reasons for desiring inspection. The proper remedy in case of refusal is injunction, not mandamus. — *Holland v. Dickson & Crystal Palace Co.*, 36 W.R. 320.
- (iii.) **Ch. D.** — *Rectification of Register — Blank Transfer — Sale of Shares — Companies Act, 1862, s. 35.* — Shares were deposited as security by A. with B., accompanied by a blank transfer. B. sold the shares to W. and filled in his name as transferee. A. gave notice to the company not to register W. *Held*, that there was jurisdiction to order the register to be rectified by inserting W.'s name; that the company, having been neutral, ought not to be ordered to pay costs, and that there was no jurisdiction to order A. to pay costs. — *E. p. Wernher; in re Kimberley North Block Diamond Mining Co.*, 58 L.T. 305. •
- (iv.) **Ch. D.** — *Reduction of Capital — Form of Minute — Companies Act, 1877, s. 4.* — A company having passed a special resolution to reduce its capital; the Court being satisfied that the reduction did not involve any diminution of liability in respect of unpaid capital, or the payment to any shareholder of unpaid capital, dispensed with the addition of the words "and reduced." *Held*, that the minute proposed to be registered should have on the face of it the amount of the original, as well as of the reduced capital. — *Re West Cumberland Iron and Steel Company*, 58 L.T. 152.
- (v.) **Ch. D.** — *Shares — Payment in Cash — Companies Act, 1867, s. 25.* — A shareholder purchased a debt due from a company, and agreed with the directors that a sufficient part of it should be applied in paying up his shares in full. No entry was made in the books of the company, other than a minute of the resolution accepting the agreement, and no contract was registered. *Held*, that the transaction was not equivalent to a payment in cash. — *In re Land Development Association; Kent's case*, L.R. 37 Ch. D. 508. \*
- (vi.) **C. A.** — *Transfer of Stock — Unregistered — Title of Transferee — Companies Clauses Act, 1845, ss. 14, 15, 16, 17.* — Decision of Ch. D. (see Vol. 12, p. 94, viii.) affirmed. — *Nanney v. Morgan*, L.R. 37 Ch. D. 346; 57 L.J. Ch. 311; 58 L.T. 238.
- (vii.) **Ch. D.** — *Unincorporated Company — Registration — Deed of Settlement — Liability of Members on Contracts — Constructive Notice.* — Where the deed of settlement of an unincorporated company, registered under the Joint Stock Companies Registration Act (7 & 8 Vict., c. 110), limited the liability of members to the amount of their shares, *held*, that on contracts which contained no such limitation the liability of the members was unlimited, and that persons dealing with such a company had not constructive notice of the limitation contained in the deed of settlement. — *Re The Norwich Equitable Fire Assurance Society*, 58 L.T. 35.
- (viii.) **Ch. D.** — *Voluntary Winding-up — Stay of Proceedings — Companies Act, 1862, ss. 89, 138.* — The Court has jurisdiction to stay proceedings under a voluntary winding-up. — *In re Steamship "Titian" Co.*, 58 L.T. 178; 36 W.R. 347.

- (i.) **C. A.—Voluntary Winding-up—Contract after Winding-up—Beneficial Winding-up—Companies Act, 1862, s. 131.**—In an action by a company in voluntary winding-up on a contract made after the winding-up, and which, but for the winding-up, would have been in the ordinary course of its business, the onus of proving that the contract was not for the beneficial winding-up of the company lies on the defendant.—*Hire Purchase Furnishing Co. v. Richens*, L.R. 20 Q.B.D. 387; 36 W.R. 365.
- (ii.) **Ch. D.—Winding-up—Contribution in Respect of Shares Allotted as Fully Paid—Constructive Notice.**—Part of the consideration for a business purchased by a company consisted of shares allotted as fully paid up, but in respect of which no contract was filed. The certificates, which stated that the shares were fully paid up, were deposited by the vendor with the trustees of the marriage settlement of a lady to whom he was indebted, and the shares were afterwards transferred to them. One of the trustees, a solicitor, had acted in the formation of the company. *Held*, that unless it could be shewn that he would, but for gross or culpable negligence, have acquired notice that the shares were not paid up, there was no such constructive notice as would make the trustees liable.—*Re A. W. Hall & Co.*, 57 L.J. Ch. 288; 59 L.T. 156.
- (iii.) **C. A.—Winding-up—Inspection of Books—Companies Act, 1862, ss. 115, 155, 156.**—A company which had been wound-up under supervision, had agreed to sell to a new company all its assets. The agreement having been sanctioned by the Court, the liquidator handed over to the new company the books of the old company. An application by shareholders for inspection of the books was refused on the ground that it was not required for the purposes of the winding-up, but for the purpose of enforcing, either the private rights of the shareholders against the directors and promoters, or the rights of the old company against the new.—*In re North Brazilian Sugar Factories Co.*, L.R. 37 Ch. D. 83; 57 L.J. Ch. 110; 58 L.T. 4.
- (iv.) **C. A. & Q. B. D.—Winding-up—Liquidator—Action against—Staying Proceedings—Companies Act, 1862, ss. 87, 203.**—In the winding-up of an unregistered company, an order was made vesting the property in the liquidator. *Held*, that he was not personally liable for a rent-charge issuing out of land part of such property, and that an action for such rent-charge being commenced without leave of the Court must be stayed, being in substance against the company.—*Graham v. Edge*, L.R. 20 Q.B.D. 588; 57 L.J. Q.B. 231; 36 W.R. 529.
- (v.) **Ch. D.—Winding-up—Payment by Company subsequently to Winding-up—Companies Act, 1862, s. 153.**—The Court will not, in the exercise of its discretion, give validity to a payment by a company after the commencement of the winding-up of a debt previously due, even if a perfectly *bond fide* debt. On the day on which a winding-up petition was presented, the company paid a creditor who was ignorant of the petition a part of his debt, on condition that he should continue to supply goods for cash. *Held*, that such payment must be refunded, but that a cash payment made at the same time for goods supplied might be allowed.—*In re Civil Service and General Store*, 57 L.J. Ch. 119; 58 L.T. 220.
- (vi.) **Ch. D.—Winding-up—Surplus Assets—Distribution—Shares Fully and Partly Paid-up.**—Certain shares in a company were allotted as fully paid-up, and the articles provided that the owners of these shares should be entitled to interest on such amount of the nominal value of these shares as should be equal to the amount for the time being not called up on the ordinary shares. The amount due on the latter shares was not

called up in full. In the winding-up, after paying the holders of the fully paid-up shares the excess in value of their shares over the ordinary shares, there was a surplus. *Held*, that the holders of fully paid-up shares were entitled to interest on the amount paid them, from the date of the commencement of the winding-up.—*In re Exchange Drapery Co.*, 36 W.R. 444.

- (i.) **Ch. D.**—*Winding-up—Vesting Order—Companies Act, 1862, s. 203.*—A vesting order cannot be obtained *ex parte* except under special circumstances.—*In re Albion Mutual Permanent Building Society*, 57 L.J. Ch. 248.

See Bill of Sale, p. 65, ii., iii. Practice, p. 88, i., ii., iii.

### Contempt of Court:—

- (ii.) **P. D.**—*Divorce Suit—Advertisement for Evidence.*—In a divorce suit on the wife's petition for adultery and cruelty, the husband published in the district where the wife resided a notice purporting to be signed by him, offering a reward for evidence of the confinement of a young married woman of a female child "probably not registered." *Held*, to be a contempt of court.—*Butler v. B.*, L.R. 13 P.D. 73.

### Contract:—

- (iii.) **P. C.**—*Newfoundland—Contract—Construction—Railway—Land Grant—Subsidy—Assignee—Divisibility—Counter-Claim.*—A company contracted with a Colonial government to construct a railway, in consideration of an annual subsidy, "to attach in proportionate parts and form part of the assets of the company as and when each section is completed," and of a land grant "upon completion of each section." The company assigned their interest in the subsidy, and failed to complete the railway. *Held*, that on completion of each section a proportionate part of the subsidy became payable for the whole period, and the claim to the land grant became complete; that if the government had claims against the company it might *pro tanto* relieve itself from payment of the subsidy by counter-claim; and that the assignees were liable to a similar counter-claim.—*Newfoundland Government v. Newfoundland Railway*, 57 L.J. P.C. 35; 58 L.T. 285.
- (iv.) **C. A.**—*Sale of Shares—Obligation of Vendor as to Registration.*—When shares in a company are sold on the Stock Exchange, and, in accordance with the rules of the Stock Exchange, the transfer is executed, and the price paid on delivery of the transfer, the vendor is under no obligation to procure the registration by the company of the purchaser.—*London Founders' Association v. Clarke*, L.R. 20 Q.B.D. 576; 36 W.R. 489.

### Conveyance:—

- (v.) **C. A.**—*Construction—Parcels—Bed of River ad medium filum—Rebuttal.*—The presumption that by a conveyance describing the land as bounded by a river it is intended that the bed of the river should pass *ad medium filum*, may be rebutted. The owner of a manor by conveyances dated in 1767 and 1846 conveyed lands bounded by a river the bed of which formed parcel of the manor. Prior to the earliest conveyance, a fishery in the river opposite the lands conveyed was leased as a distinct tenement, and was under lease to tenants at the date of the conveyances in 1846. The grantees under the conveyances never claimed any right of fishing until the acts complained of in the action. *Held*, that the conveyances ought not to be construed as passing any part of the bed of the river.—*Duke of Devonshire v. Pattinson*, L.R. 20 Q.B.D. 263; 57 L.J. Q.B. 187.



**Copyright:—**

- (i.) **C. A.**—*Musical Composition—Assignment*—3 & 4 Will. IV., c. 15, s. 2—5 & 6 Vict., c. 45, s. 20.—An assignment of copyright in a musical composition must be in writing. Therefore where the plaintiff had acted as musical conductor at the defendant's music hall, and had composed pieces for performance there, for which he had been paid, *held*, that no assignment of the copyright could be implied, and that the plaintiff could sue for infringement of the copyright.—*Eaton v. Lake*, L.R. 20 Q.B.D. 378; 57 L.J. Q.B. 227; 36 W.R. 277.
- (ii.) **Ch. D.**—*Registration—Time of First Publication—Proprietorship of Periodical—Payment for Contributions—Copyright Act, 1842, ss. 3, 13, 18, 24.*—To enable the proprietor of a book or periodical to maintain an action for infringement of copyright, the registration must give the day as well as the month and year of first publication. The proprietor of a periodical must in order to maintain an action for infringement of copyright, in respect of articles contained in it, prove that the contributors of such articles have been actually paid for them.—*Collingridge v. Emmott*, 57 L.T. 864.
- (iii.) **Ch. D.**—*Title of Newspaper—Trade Name—Reputation—Copyright Acts, 6 & 7 Will. IV., c. 76; 5 & 6 Vict., c. 45.*—No copyright in the title of a newspaper can be acquired by registration under the Copyright Acts, but an exclusive right thereto as a trade name may be acquired by reputation and acceptance.—*Licensed Victuallers' Newspaper Co. v. Bingham*, 36 W.R. 433.

**Coroner:—**

- (iv.) **Q. B. D.**—*Inquisition—Irregularity—Amendment—Coroners Act, 1887, s. 20.*—Deceased was run over and killed at a level crossing. The coroner's jury found that the directors of the railway did "feloniously kill and slay" him, without further designating them or the offence charged. *Held*, that the inquisition was bad and incapable of amendment, and must be quashed. *Held*, also, that the original jurisdiction of the Court to quash informal or irregular inquisitions still remained.—*Reg. v. Directors of the G. W. R.*, L.R. 20 Q.B.D. 410; 57 L.J. M.C. 31; 36 W.R. 506.

**Costs:—**

- (v.) **Ch. D.**—*Appeal—Refreshers.*—The taxing master may allow refreshers to counsel in appeals from the Chancery Division, as well as in appeals from the Queen's Bench Division.—*Easton v. London Joint Stock Bank*, 57 L.T. 876; 36 W.R. 375.
- (vi.) **Ch. D.**—*Taxation—Third-Party Order—Special Expenses Authorised by Client—Attorneys and Solicitors Act, 1843, s. 38.*—A person who is liable to pay the costs of another, having obtained the usual third-party taxation order, cannot on taxation object to be charged with any payments which the other person had authorised. He ought, if such payments were unreasonable, not to apply for taxation, but to refuse to pay, and leave the other party to bring his action.—*Re Holliday and Godlee*, 58 L.T. 801.

See Husband and Wife, p. 75, iii. Infant, p. 76, v. Tenant for Life, p. 94, v. Practice, p. 83, iii., iv., v., vi., vii.; p. 84, i., ii.

**Counsel:—**

- (vii.) **C. A.**—*Undertaking not to Appeal.*—It is within the implied authority of counsel to give an undertaking on terms not to appeal, and the undertaking cannot be withdrawn, unless it was induced by surprise or misapprehension.—*In re West Devon Great Consols Mine*, 36 W.R. 342.

**County Court:—**

- (i.) **Q. B. D.**—*Action Remitted—New Defendant Added—County Courts Act, 1867, s. 10.*—A County Court Judge cannot add a new defendant against his will, in an action remitted from the High Court.—*Mulleneisen v. Coulson*, 36 W.R. 524.
- (ii.) **Q. B. D.**—*Jurisdiction—High Bailiff—Negligence of—Power to Order Compensation—County Courts Act, 1846, ss. 104, 115.*—The jurisdiction of a County Court Judge to order a bailiff to compensate a plaintiff who has been injured by his neglect in levying an execution, can only be exercised over the bailiffs of his own Court.—*Reg. v. County Court Judge for Shropshire*, L.R. 20 Q.B.D. 242. *Reg. v. Rogers*, 57 L.J. Q.B. 143; 58 L.T. 86. *Ashley v. Norris*, 36 W.R. 476.
- (iii.) **Q. B. D.**—*Jurisdiction—Specific Performance—County Courts Act, 1867, s. 9—Prohibition—Separable Claims.*—A county court has no jurisdiction to entertain a suit for specific performance of a parcel agreement to grant a right of way. Where a plaint contains two claims, one of which is without the jurisdiction of the county court, a prohibition may be granted as to that one.—*Reg. v. Westmoreland Judge*, 36 W.R. 477.

**Criminal Law:—**

- (iv.) **Q. B. D.**—*Common Assault—Complaint by Person Aggrieved—Condition Precedent to Conviction—24 & 25 Vict., c. 100, s. 42.*—The justices cannot summarily convict for a common assault in the absence of a complaint by or on behalf of the person aggrieved. A police constable who takes a charge of common assault from the person assaulted cannot, on the failure of the person assaulted to appear, prefer a charge of assault before the justices.—*Nicholson v. Booth*, 58 L.T. 187.
- (v.) **Q. B. D.**—*Trial by Jury—Imprisonment for more than Three Months—Night-Poaching Act (9 Geo. IV., c. 69) s. 1—Summary Jurisdiction Act, 1879, s. 17.*—A person charged with night-poaching, for which he is liable to imprisonment for not more than three months and to a further imprisonment for six months in case he fail to find sureties for his not so offending again, is not entitled to claim a trial by jury, as being charged with an offence for which he is liable to imprisonment for more than three months. — *Williams v. Wynne*, 57 L.J. Q.B. 30; 58 L.T. 282.

**Crown Prerogative:—**

- (vi.) **C. A.**—*Exclusive Fishery—Non-Tidal River—Franchise.*—*Quære*, whether the Crown ever could have as part of its prerogative an exclusive right of fishing in a non-tidal river flowing over the soil of a subject, and whether, if the Crown had such a right, it could be granted to a subject as a franchise. — *Duke of Devonshire v. Pattinson*, L.R. 20 Q.B.D. 263; 57 L.J. Q.B. 187.

**Customs Annuity Fund:—**

- (vii.) **C. A.**—*56 Geo. III., c. lxxiii, s. 9—Nature of Subscriber's Interest—Nominee—Nomination as Trustee—Lunatic Subscriber.—Decision of Ch. D. (see Vol. 13, p. 7, vii.) reversed.—Urquhart v. Butterfield*, L.R. 37 Ch. D. 357; 57 L.T. 780; 36 W.R. 376.

**Debtor and Creditor:—**

- (viii.) **H. L.**—*Committal—Order for Payment by Instalments—Debt Act, 1869, s. 5.—Decision of C. A. (see Vol. 12, p. 31, i.) reversed.—Stonor v. Fowle*, 58 L.T. 1.



**Deed :—**

- (i.) **Ch. D.**—*Transfer of Shares—Seal.*—A blank transfer of shares had no seal or wafer opposite the signature of the transferor, but a printed circle inclosing the words “place for a seal.” The document purported to be attested as having been “signed, sealed, and delivered” in the presence of the witness, but there was no evidence that the document was executed as a deed. *Held*, that the document could not take effect as a deed.—*In re Balkis Consolidated Co.*, 58 L.T. 300; 36 W.R. 392.

**Domicil :—**

- (ii.) **Ch. D.**—*Legitimacy—Domicil of Birth—Foreign Nationality.*—G., a native of Geneva, after having, as the Court held, acquired an English domicil, had children born out of wedlock. Having married their mother he presented a petition to the Council of Geneva for their legitimation, which was granted. *Held*, that the legitimacy of the children must be determined according to the law of their domicil of birth, and that they were illegitimate.—*Vaucher v. Solicitor to the Treasury*, 57 L.T. 795.

See Husband and Wife, p. 74, vi.

**Donatio Mortis Causâ :—**

- (iii.) **Ch. D.**—*Evidence of Donee—Corroboration—Deposit Note.*—A *donatio mortis causâ* may be established by the uncorroborated evidence of the donee. A banker's deposit note may be the subject of a *donatio mortis causâ*.—*Farman v. Smith*, 58 L.T. 12.

**Easement :—**

- (iv.) **Q. B. D.**—*Lease of Easement by Occupier—Rent after Determination of Occupier's Tenancy.*—The plaintiff, occupier of a farm, granted to the defendants the right to use a watercourse running through the farm at a yearly rent, the agreement to be terminable at three months' notice. *Held*, that the operation of the agreement was limited to the occupation of the farm by the plaintiff, and that after such occupation ceased he was not entitled to the rent, although no notice had been given to determine the agreement.—*Jones v. The Dorothea Company*, 58 L.T. 80.
- (v.) **Ch. D.**—*Light—Implied Grant—Derogation from by Vendor.*—The fact that two parcels of land, sold at different times by the same vendor, are separated by a public street, does not prevent the application of the rule which prohibits a vendor by a subsequent grant from derogating from a grant of light implied in a previous grant. Where a municipal corporation has acquired a block of land for an improvement scheme, a purchaser of a parcel must be taken to know that a reasonable use is intended to be made of the adjoining part of such land, and cannot set up an implied grant of light inconsistent with such reasonable use.—*The Birmingham, Dudley, and District Banking Co. v. Ross*, 57 L.J. Ch. 106; 57 L.T. 800.
- (vi.) **C. A.**—*Right of Way—Grant of Way by General Words.*—The plaintiff and defendant, before 1873, held adjoining farms under the same landlord, as tenants from year to year. A lane ran through the defendants farm, which was exclusively used by the plaintiff. In 1873, the landlord granted the defendant a lease of his farm, which contained no reference to the lane or its use by the plaintiff, but the soil of the lane was included in the admeasurements of the farm. Subsequently the landlord granted the plaintiff a lease of his farm “with all the appurtenances.” *Held*, that the lease to the defendant was not a

demise of the soil of the lane free from the plaintiff's right of way, and that the right of way passed to the plaintiff by his lease under the word "appurtenances."—*Thomas v. Owen*, L.R. 20 Q.B.D. 225; 57 L.J. Q.B. 198; 58 L.T. 152; 36 W.R. 440.

### **Ecclesiastical Law:—**

- (i.) **Q. B. D.**—*Churchwarden—Inhabitant of Parish—Right to Attend Church—Duty of Churchwarden.*—Members of the Church of England are obliged, under pain of spiritual censure, to attend church; they have therefore a right to attend their parish church. The churchwardens have the duty of allotting seats, but have no right to exclude a parishioner, though they are of opinion that he cannot conveniently have a seat. A churchwarden having committed a technical assault on the plaintiff in excluding him on the ground that there was no room to seat him conveniently; *held*, that the plaintiff was entitled to nominal damages, and that the action was rightly brought in the temporal and not in the Ecclesiastical Court.—*Taylor v. Timson*, 57 L.J. Q.B. 216.
- (ii.) **Q. B. D.**—*Welsh Diocese—Power of Bishop to Refuse Institution—Due Inquiry*—1 & 2 Vict., c. 106, s. 104.—The bishop of a Welsh diocese, on presentment for institution to a benefice of a clergyman who cannot speak Welsh, has an absolute discretion as to the mode of ascertaining the needs of the parish, and is not bound to hold a formal inquiry of a judicial character, and is justified in refusing institution on the report of persons commissioned by himself, who refused to allow the patron or the clergyman presented to attend or give evidence at the inquiry.—*The Marquis of Abergavenny v. The Bishop of Llandaff*, L.R. 20 Q.B.D. 460.

### **Estoppel:—**

- (iii.) **Q. B. D.**—*Privity between Incumbent of Benefice and Patron.*—An incumbent who comes into a benefice is a privy in law to the patron who appointed him, so as to be entitled to the benefit, and subject to the burden, of the same estoppel as the patron. The defendant, after having resigned a benefice, brought an action against the bishop and the patrons to have his resignation declared void. The action having been dismissed and a new incumbent appointed, the defendant refused to give up possession of the parsonage, and, to an action by the new incumbent to recover possession, set up as defence that his resignation was void. *Held*, that the defence should be struck out as frivolous and vexatious.—*Magrath v. Reichel*, 57 L.T. 850.

### **Executor:—**

- (iv.) **P. D.**—*Intermeddling before Probate—Injunction and Receiver—Co-Executor.*—Where an executor had, before probate, and without the assent of his co-executor, intermeddled with the estate, the Court gave leave to his co-executor to issue a writ against him, claiming an injunction to restrain him from dealing with the estate before probate, and praying for the appointment of a receiver.—*In the goods of Moore*, L.R. 13 P.D. 36.
- (v.) **Ch. D.**—*Lease—Liability.*—An executor who takes possession of a leasehold of his testator is liable personally as an assign of the lease for subsequent rent, up to the letting value of the leasehold.—*In re Bowes; Earl of Strathmore v. Vane; Norcliffe's Claim*, L.R. 37 Ch. D. 128; 58 L.T. 309; 36 W.R. 393.
- (vi.) **C. A.**—*Survival of Action—Breach of Promise of Marriage.*—An action for breach of promise of marriage, where no special damage is alleged, does not survive against the personal representatives of the promisor. The special damage which would cause the action to survive must be

damage to the property of the promisee, and must be within the contemplation of the parties at the date of the promise, and the action can be brought for such special damage only, and not for general damages.—*Finlay v. Chirney*, L.R. 20 Q.B.D. 494; 36 W.R. 534.

See Practice, p. 83, i.

### Foreign Judgment:—

- (i.) **C. A.**—*Cause of Action—Liability to Avoidance.*—Decision of Ch. D. (see Vol. 13, p. 8, vi.) reversed.—*Nourion v. Freeman*, L.R. 37 Ch. D. 244; 58 L.T. 242.

See Practice, p. 87, ii.

### Gas Company:—

- (ii.) **C. A.**—*Assigned District—Point of Supply—Metropolis Gas Act, 1860, s. 6.*—Decision of Ch. D. (see Vol. 13, p. 9, i.) affirmed.—*Gas Light and Coke Co. v. South Met. Gas Co.*, 36 W.R. 455.

### Ground Game:—

- (iii.) **Q. B. D.**—*Spring Traps—Ground Game Act, 1880, s. 6—Right of Killing Ground Game—Tenant with Right of Shooting.*—A tenant of land who is entitled to the game and the right of shooting thereon, is liable to a penalty for setting spring traps for the purpose of killing ground game otherwise than in rabbit holes.—*Saunders v. Pitfield*, 58 L.T. 108.

### Harbour:—

- (iv.) **Ch. D.**—*Wharves and Quays—Private Rights over—Obstruction to Public Traffic—Workington Dock and Harbour Acts, 1840, 1882.*—Trustees were appointed by Act of Parliament to manage a harbour. The Act authorised the owner of land situate within or adjoining to the harbour to lay down railways over the quays, so that they should be of such height and in such form as not to interrupt the public traffic of the harbour. The owner of land adjoining one of the quays of the harbour laid a railway along the quay. *Held*, that the trustees of the harbour were entitled to an injunction to restrain the laying of the railway, on the ground that it would impede the public traffic of the harbour.—*Lowther v. Curwen*, 58 L.T. 168.

### Husband and Wife:—

- (v.) **Q. B. D.**—*Agreement to live Separately—Action for Arrears of Maintenance—Consideration—Statute of Frauds, s. 4.*—A husband and wife verbally agreed, upon the withdrawal of cross summonses for assault, to live separately, the husband to pay a weekly sum to the wife for maintenance. *Held*, that the agreement was valid under the circumstances, and that an action by the wife for arrears of maintenance was maintainable, as for money paid at the defendant's request upon an executed consideration.—*McGregor v. McGregor*, L.R. 20 Q.B.D. 529; 58 L.T. 227; 36 W.R. 470.
- (vi.) **P. D.**—*Declaration of Nullity—American Divorce—Domicil—Jurisdiction.*—A domiciled Englishwoman went through the form of marriage with an American citizen. She cohabited with him in the United States, and obtained from the United States Court a decree dissolving the marriage on the ground of the husband's incapacity. *Held*, that as the marriage was not void but voidable, the wife had acquired an American domicil, and that the United States Court had jurisdiction to dissolve the marriage, and that, as there was no marriage in existence, the Court could not make a declaration of nullity of marriage.—*Turner v. Thompson*, L.R. 13 P.D. 37.

- (i.) **C. A.**—*Divorce—Alimony—Pending Appeal*.—Where there has been a verdict of a jury finding a wife guilty of adultery, the wife's right to alimony ceases, subject to the discretion of the judge to continue it pending a new trial, if he considers it reasonable.—*Dunn v. Dunn*, 36 W.R. 539.
- (ii.) **P. D.**—*Divorce—Adultery and Desertion—Proof of Desertion Insufficient—Adjournment—Supplemental Petition*.—In a suit by a wife for divorce on the ground of adultery and desertion, the adultery was proved, but the desertion fell short of the required period of two years by several months. The hearing was adjourned, and twelve months afterwards, the husband not having returned to cohabitation, the wife filed a supplemental petition on which a *decree nisi* was granted.—*Wood v. Wood*, L.R. 13 P.D. 22.
- (iii.) **P. D.**—*Divorce—Application to Condemn Wife in Costs—Notice*.—When, on a husband's petition for divorce, the wife, who had separate estate, did not appear to defend, the Court refused to make an order condemning her in costs, until she had notice of the application.—*Field v. Field*, L.R. 13 P.D. 23 ; 58 L.T. 90.
- (iv.) **P. D.**—*Divorce—Validity of—Indian Divorce Act, s. 2*.—An officer in the army, who had been married in Ireland, obtained, while serving in India, a decree from an Indian Court dissolving his marriage on the ground of his wife's adultery committed in India. *Held*, that the divorce was valid.—*In the Goods of Nares*, L.R. 13 P.D. 35 ; 57 L.J. P. 19 ; 36 W.R. 528.
- (v.) **C. A.**—*Judicial Separation—Property of Wife—Separate Use—Matrimonial Causes Act, 1857, s. 25*.—A wife who has obtained a decree of judicial separation is to be deemed a *feme sole* in respect to property which may accrue to her after the decree, but not in respect to property to which she was entitled in possession at the date of the decree.—*Waite v. Morland*, 36 W.R. 484.
- (vi.) **Q. B. D.**—*Married Women (Maintenance in Case of Desertion) Act, 1886, s. 2—Rehearing of Summons*.—The power of justices to rehear at the instance of the husband a summons for maintenance of a deserted wife, is confined to cases where proof is offered that the wife has since the making of the order been guilty of adultery.—*Sephton v. Sephton*, 58 L.T. 281.
- (vii.) **C. A.**—*Necessaries—Adultery—Connivance*.—Decision of Q. B. D. (see Vol. 13, p. 10, vi.) affirmed.—*Wilson v. Glossop*, L.R. 20 Q.B.D. 354 ; 57 L.J. Q.B. 161 ; 36 W.R. 296.
- (viii.) **Ch. D.**—*Validity of Marriage—Marriage with Savage*.—A domiciled Englishman married in Africa a woman of an uncivilized tribe according to native rites. Polygamy was allowed by the customs of the tribe. *Held*, that the marriage was not valid.—*Bethell v. Hildyard*, 36 W.R. 503.
- (ix.) **Ch. D.**—*Wife's Real Estate—Conveyance by Husband and Wife—Acknowledgment—Purchase Money—Chose in Action—Fines and Recoveries Act, 1833, ss. 77, 79, 80, 89—Common Pleas Rules—Hilary Term, 1839*.—The Common Pleas Rules for examination of married women are not *ultra vires*. A husband and wife sold real estate of the wife, the conveyance being acknowledged by the wife. *Held*, that the whole purchase money became the property of the husband. A part of it was invested to meet an annuity, the trusts being declared by a deed to be for the husband and wife respectively, according to their interests by law for the time being. On the death of the husband during the life of the annuitant, *held*, that the fund was never the chose in action of the wife, and that she had no interest in it.—*Tennent v. Welch*, 36 W.R. 389.

**Insurance :—**

- (i.) **Q. B. D.**—*Reference to Arbitration—Condition Precedent.*—One of the conditions endorsed on a fire insurance was, that in case of difference in the adjustment of a loss, the amount payable should, whether the right to recover on the policy be disputed or not, be submitted to arbitration, and that the insured should not be entitled to commence or maintain an action upon his policy unless the amount of the loss should have been referred and determined; *held*, a condition precedent to the right to maintain an action.—*Viney v. Norwich Union Fire Insurance Society*, L.R. 20 Q.B.D. 172; 57 L.J. Q.B. 82; 58 L.T. 26; 36 W.R. 479.

**Income Tax :—**

- (ii.) **C. A.**—*Tithe Rent Charge—Annual Value—Deductions—Income Tax Acts, 1842, s. 52, Sched. A, No. 1; 1853, s. 2, Sched. A.*—Decision of **Q. B. D.** (see Vol. 13, p. 10, viii.) affirmed. — *Stevens v. Bishop*, L.R. 20 Q.B.D. 442.
- (iii.) **Q. B. D.**—*Sea Wall—Deduction for*—16 & 17 Vict., c. 34, s. 37.—Lands reclaimed from the sea which were worth a small annual amount were largely increased in value by the building of a sea-wall. *Held*, that the owner was not entitled to any deduction from income tax in respect of the expenses of the sea wall.—*Hesketh v. Bray*, L.R. 20 Q.B.D. 589; 57 L.J. Q.B. 184; 58 L.T. 313.
- (iv.) **Q. B. D.**—*Repayment—Computation of Profits—Within or at end of Year of Assessment*—5 & 6 Vict., c. 35, s. 133—23 Vict., c. 14, s. 10.—A claim being made in March, 1887, for repayment of income tax assessed on profits for the years ending April, 1884, April, 1885, and April, 1886, it not being shewn that it was more difficult to discover and prove diminution of profits for the two earlier years than for the later year; *held*, by Cave, J., that no repayment could be claimed in respect of the earlier years, and by Grantham, J., that such repayment could be claimed.—*Reg. v. Commissioners for Special Purposes of the Income Tax*, L.R. 20 Q.B.D. 549.

**Infant :—**

- (v.) **Ch. D.**—*Marriage of Female Ward of Court—Costs of Settlement.*—The costs of a settlement of the property of a female ward of court, made upon her marriage with the sanction of the Court, ordered to be paid out of the corpus of the settled property.—*De Stacpoole v. De Stacpoole*; *De Stacpoole v. Stapleton*; *De Stacpoole v. Seymour*, L.R. 37 Ch. D. 139; 36 W.R. 820.

**International Law :—**

- (vi.) **Ch. D.**—*De facto Government—Acts of.*—The acts of a *de facto* Government towards foreigners by whose Government it had been recognised do not require ratification, and cannot be repudiated by the *de jure* Government when established.—*Republic of Peru v. Dreyfus*, 36 W.R. 492.

**Intoxicating Liquors :—**

- (vii.) **Q. B. D.**—*Inn—Sale to Lodger—Consumption by Guests of Lodger—Licensing Act, 1874.*—The sale by an innkeeper to a *bonâ fide* lodger at his inn of intoxicating liquor, which was consumed by the lodger and his *bonâ fide* guests in a private room on the premises, after closing hours, is not an offence against the Licensing Act.—*Pine v. Barnes*, L.R. 20 Q.B.D. 221; 57 L.J. M.C. 28; 36 W.R. 473.

**Landlord and Tenant:—**

- (i.) **C. A.—Mortgage—Notice to Pay Rent to Mortgagee—Payment by Compulsion.**—A mortgagor having let the mortgaged premises, the mortgagee gave notice to the tenant to pay the rent to him. Judgment having been recovered in an action against the mortgagor, a receiver of the rents of the premises was appointed, “without prejudice to the rights of prior incumbrancers.” The tenant having paid his rent to the mortgagee, *held*, that the money so paid was paid by compulsion of law on behalf of his landlord, and could be set up in answer to the receiver’s claim for rent. Decision of Q. B. D. (*see* Vol. 13, p. 46, ii.) affirmed.—*Underhay v. Read*, L.R. 20 Q.B.D. 209; 57 L.J. Q.B. 129; 36 W.R. 298.
- (ii.) **Q. B. D.—Agreement for Lease—Forfeiture—Notice—Conveyancing Act, 1881, s. 14.**—Agreement dated 1853 for a lease for 80 years, the tenant to execute permanent repairs and improvements, the lease to be executed on completion of the repairs and improvements, and to contain a covenant to repair. No lease was executed. On an action by the reversioner to recover the premises for a forfeiture by reason of the tenant’s breach of the covenant to repair; *held*, that the forfeiture could be enforced without serving on the tenant a notice to remedy the breach.—*Swain v. Ayres*, L.R. 20 Q.B.D. 585.

**Lands Clauses Act, 1845:—**

- (iii.) **Ch. D.—Compulsory Purchase—Part of House.**—A railway company having given notice to take the plaintiff’s house, cannot be compelled to purchase stables and a garden, separated from the house by a road, and always occupied by the plaintiff as an adjunct to the house.—*Kerford v. Seacombe, &c., Ry. Co.*, 57 L.J. Ch. 270.

**Lease:—**

- (iv.) **Ch. D.—Covenant to take Beer from Lessors—Proviso for Reduction of Rent—Penalty.**—The lease of a public-house contained a covenant that the lessee should purchase all his beer from the lessors, and a proviso for reduction of the rent so long as he should do so. *Held*, that the covenant was an absolute one, and that the lessee had not the option of purchasing his beer elsewhere, and paying the full rent.—*Hanbury v. Cundy*, 58 L.T. 155.

**Libel:—**

- (v.) **C. A.—Interlocutory Injunction—Newspaper Report—Letter from Correspondent.**—Decision of Ch. D. (*see* Vol. 13, p. 43, v.) affirmed.—*Liverpool Household Stores Association v. Smith*, L.R. 37 Ch. D. 170; 57 L.J. Ch. 85; 58 L.T. 204; 36 W.R. 485.

**Licensing:—**

- (vi.) **C. A.—Beer License Existing in 1869—Application for Wine License—Justices—Jurisdiction to Refuse—Mandamus—Wine and Beerhouse Act, 1869, s. 19.**—The limitation of the grounds for refusing “an application for a certificate for the sale of beer, cider, or wine,” to be consumed on premises in respect of which on the 1st of May, 1869, a license was in force for the sale of beer, cider, or wine to be consumed thereon, does not apply to premises licensed at that date for either beer, cider, or wine, when a license for any other or others of them is applied for. A general return that the justices have heard and determined is not conclusive on a mandamus, but the prosecutor may reply facts shewing that the justices have exceeded their jurisdiction or not exercised it.—*Reg. v. King*, L.R. 20 Q.B.D. 430; 57 L.J. M.C. 20.



**Local Government :—**

- (i.) **Q. B. D.**—*Delegation of Right to Prosecute.*—A local board cannot delegate to the police, who are not officers of the board or under its control, its right to prosecute for offences against the Public Health Act, 1875, s. 259.—*Kyle v. Barbor*, 58 L.T. 229.
- (ii.) **Q. B. D.**—*Officer of Local Authority—Interest in Contracts—Fee or Reward in Addition to Salary—Public Health Act, 1875, ss. 150, 189, 193, 326.*—By the terms of contracts entered into with a local authority for the purposes of the Public Health Act, 1875, the surveyor was to receive from the contractors, in respect of bills of quantities to be prepared by him, percentages on the amounts which he should certify to be due to the contractors. *Held*, that he was liable to penalties as having been “concerned or interested” in the contracts. The local authority employed their surveyor to superintend certain works as their engineer, and agreed to remunerate him by a percentage on the outlay. *Held*, that he was liable to penalties for taking a fee or reward in addition to his salary.—*Whiteley v. Barley*, L.R. 20 Q.B.D. 196; 36 W.R. 553.
- (iii.) **C. A.**—*Public Health Act, 1875, ss. 4, 150—Word “Street.”*—Decision of Q. B. D. (*see* Vol. 13, p. 44, iv.) affirmed.—*Jowett v. Idle Local Board*, 36 W.R. 530.

**Lunacy :—**

- (iv.) **Ch. D.**—*Lunatic not so found—Fund in Court—Provision for Lunatic—Trustee Relief Act, 1847.*—Where the share in a fund to which a person of unsound mind had become absolutely entitled was paid into Court by the trustees of the fund, the Court, on the application of such person by his next friend, under the circumstances of the case, made an order for the payment of the income to the wife of such person, without requiring the appointment of a guardian in lunacy, for his maintenance, comfort, and support.—*In re Silva's Trusts*, 57 L.J. Ch. 281; 58 L.T. 46; 36 W.R. 366.

**Married Woman :—**

- (v.) **C. A.**—*Restraint on Anticipation—Duration.*—Where a fund subject to a particular estate is given absolutely to a married woman with a restraint on anticipation, the restraint will not, in the absence of any other ground, be confined to the continuance of the particular estate.—*In re Tippet's and Newbould's Contract*, L.R. 37 Ch. D. 444.
- (vi.) **Ch. D.**—*Separate Use—Restraint on Alienation.*—Devise and bequest of freeholds and leaseholds to two daughters of testator as tenants in common to and for their several and respective sole and separate use and benefit absolutely, with a statement that it was the testator's “wish and request that they should not sell or dispose of any part of” the said property. *Held* that one of the daughters who was married could not sell her moiety.—*Re Hutchings to Burt*, 58 L.T. 6.
- See Husband and Wife*, p. 75, ix.

**Master and Servant :—**

- (vii.) **Q. B. D.**—*Liability of Employer for Acts of Servant—Scope of Authority—Tramways Act, 1870, ss. 51, 72.*—A tramway company instructed its conductors that except in case of assault they were not to give passengers into custody without the authority of an inspector or timekeeper. One of its conductors without such authority gave the plaintiff into custody on a charge of passing bad money. *Held*, in an action for false imprisonment, that the company was not liable.—*Charleston v. London Tramways Co.*, 36 W.R. 367.

- (i.) **C. A.**—*Mines—Wages—Weight—Deductions—Illegality—Coal Mines Regulation Act, 1872, s. 17.*—Decision of Q. B. D. (see Vol. 13, p. 13, iv.) affirmed.—*Bourne v. Netherseal Colliery*, 36 W.R. 405.

See Negligence, p. 80, i.

### Mayor's Court:—

- (ii.) **C. A.**—*Jurisdiction—Account Stated—Prohibition—Estoppel—Mayor's Court of London Procedure Act, 1857, s. 12.*—The plaintiff's solicitor, whose office was within the jurisdiction of the Mayor's Court, wrote to the defendant, demanding payment of £7 for goods sold and delivered. Neither the plaintiff nor the defendant resided or carried on business, nor was the contract made, within the jurisdiction. The defendant, in a letter to the plaintiff's solicitor, posted without but received within the jurisdiction, admitted a debt of £5. The plaintiff sued in the Mayor's Court for £7, and the defendant obtained a writ of prohibition. The plaintiff then sued for £5 on an account stated. *Held*, that there was an account stated within the jurisdiction; that the plaintiff's solicitor was his agent to receive the admission and state the account; that the writ of prohibition was no estoppel against the second action; and that the Mayor's Court had jurisdiction. — *Grundy v. Townsend*, 36 W.R. 531.

### Metropolis Management:—

- (iii.) **Ch. D.**—*Sewer—Drain—Illegal Connection with Drain—Duty of District Board—Metropolis Local Management Act, 1855, ss. 68, 72, 74, 76, 250.*—Where a private drain has, by reason of another drain being connected with it, become a "sewer," and therefore vested in a district board, the board will not be liable for a nuisance caused by the drain, if the connection has been made illegally without the knowledge of the board, and if before action brought the board did not know, and could not by exercise of reasonable care have discovered, that the drain had become a "sewer."—*Bateman v. Poplar Board of Works*, L.R. 37 Ch. D. 272; 36 W.R. 501.

### Mines:—

- (iv.) **Q. B. D.**—*Canal—Support—Right to Work—31 Geo. III., c. 68, ss. 37, 38.*—A canal was formed under the provisions of a statute, which reserved to the owners of lands through which the canal passed all mines under the canal, and enabled them to work the mines, not injuring the canal, and which provided that the canal proprietors and mine owners might, if the mines were worked near the canal, treat for the purpose of ascertaining what quantity of minerals should be left for the security of the canal, and for the summoning of a jury to assess the compensation to be paid to the mine owners. Certain mine owners, by working in the usual mode without negligence left insufficient support for the canal. *Held*, that they were liable to the canal proprietors for the damage done.—*L. & Y. R. v. Knowles*, L.R. 20 Q.B.D. 391; 57 L.J. Q.B. 150; 57 L.T. 803.

### Mortgage:—

- (v.) **C. A.**—*Loan on Transfer of Stock—Joint-holders—Re-transfer to Nominee of One.*—Decision of Ch. D. (see Vol. 13, p. 14, ii.) affirmed.—*Magnus v. Queensland National Bank*, L.R. 37 Ch. D. 466; 58 L.T. 248.
- (vi.) **C. A.**—*Power of Sale—Restriction of.*—A mortgage dated November 20, 1880, contained a covenant for payment of the principal on May 22, 1881, and a power of sale at any time after the expiration of six months



from the date of the mortgage, with a proviso restricting the exercise of the power, until default should have been made, and three months' notice to pay have been given. The mortgagee gave notice to pay in January, 1881, and sold in June, 1881. *Held*, that the sale was invalid as the power could not be exercised until at least nine months after the date of the mortgage.—*Selwyn v. Garfit*, 36 W.R. 512.

See Landlord and Tenant, p. 77, i.

### Negligence:—

- (i.) **Q. B. D.**—*Work Dangerous to Others—Duty to take Precautions—Knowledge of Plaintiff—Volenti non fit Injuria.*—Where a person is engaged on work which he knows is dangerous to others, he is bound to take precautions against the danger. Where the plaintiff has been compelled by the orders of his employer to work in a place in which he was, as he was aware, exposed to danger by reason of the defendant's acts, the maxim, *Volenti non fit injuria* does not apply.—*Thruswell v. Handyside*, L.R. 20 Q.B.D. 359.

### Negotiable Instrument:—

- (ii.) **Q. B. D.**—*Share Certificate—Blank Transfer—Power.*—An American railway company, having no office in London, issued share certificates each of which stated that H., the company's agent in London, was entitled to twenty shares "transferable only in person, or by attorney, in the books of the company." On the back was a form of transfer, being in effect an absolute transfer, followed by an irrevocable power of attorney "to make and execute all necessary acts of assignment and transfer of the said stock in the books of the company." This was signed by H., the names of the transferee and the attorney being left blank. It was proved that these certificates, by the usage of the English market, were transferred by mere delivery, like bonds to bearer. *Held*, that they were intended to pass by transfer only and not by mere delivery, and were not negotiable instruments.—*London and County Bank v. London and River Plate Bank*, L.R. 20 Q.B.D. 232.

**Notice.**—See Company, p. 67, vii.; p. 68, ii. Vendor and Purchaser, p. 96, v.

### Partnership:—

- (iii.) **Q. B. D.**—*Retired Partner—Liability of—Compromise of Actions.*—While the defendant was a partner in the firm of G. & Co., the plaintiff discounted a bill indorsed by the firm which was dishonoured. The plaintiff sued G. & Co. for the amount, and they sued him for recovery of the bill. The actions were stayed on terms which included the giving to the plaintiff by G. & Co. of a second bill. The defendant had retired from the firm at the time of the compromise, which was made without his knowledge. The plaintiff had no notice of his retirement. *Held*, that the defendant was not liable for the second bill.—*Crane v. Lewis*, 36 W.R. 480.

### Patent:—

- (iv.) **Ch. D.**—*Anticipation—Infringement.*—A patent for improvements in hydraulic lifts, the object of which was the economy of water used, *held*, not to be anticipated by an invention previously patented, which did not in any way provide for such economy of water. *Held*, also, that a patent for a combination was infringed by a machine which took the essential part of the patented combination, and used a mechanical equivalent for the part not taken.—*Ellington v. Clark*, 58 L.T. 40.

- (i.) **Ch. D.**—*Amendment of Specification—Proceedings for Revocation—Terms—Patents, Designs, and Trade Marks Act, 1883, s. 19.*—A petition for revocation of a patent was set down for hearing as an action with witnesses, and eleven months after presentation, the hearing being imminent, the patentees applied for leave to apply to amend their specification. *Held*, that leave must be granted, and the hearing postponed, on terms of the applicants proceeding with diligence, and paying all costs of the petition, up to and including the present application.—*In re Gaulard and Gibb's Patent*, 57 L.J. Ch. 209.
- (ii.) **Ch. D.**—*Disclaimer of Specification—Terms—Patents, Designs, and Trade Marks Act, 1883, s. 19.*—In an action for infringement of a patent the plaintiffs, having by their reply abandoned the charge of infringing the second claim of their specification, obtained liberty to apply at the Patent Office for leave to amend their specification by striking out the second claim, and all further proceedings in the action were stayed pending such application. The following terms were imposed: the plaintiffs to pay the costs of the application, and the costs of and occasioned by the disclaimer; both parties to be allowed to amend their pleadings after disclaimer; the plaintiffs to undertake after disclaimer to amend their pleadings, confining the action to the amended specification, or to consent to the action being dismissed with costs; in the event of the action proceeding, all other questions of costs to be reserved.—*The Haslam Foundry and Engineering Co. v. Goodfellow and Matthews*, L.R. 37 Ch. D. 118; 57 L.J. Ch. 245; 57 L.T. 788; 36 W.R. 391.
- (iii.) **Ch. D.**—*Practice—Particulars of Objections—Sufficiency—Patents, Designs, and Trade Marks Act, 1883, s. 29.*—In an action for infringement of a patent for machinery where the specification comprised seventeen distinct claims, the defendant, by his particulars of objections, alleged prior publication, (1) by articles publicly exhibited by a certain firm, (2) by certain specifications enumerated and identified by references to pages and lines. *Held*, (1) that the defendant ought to specify the particular articles which he alleged to be anticipations, but that he need not state which parts of the plaintiff's invention were anticipated thereby; and (2) that he ought to state which of the plaintiff's claims he alleged to be anticipated by the respective specifications mentioned.—*Boyd v. Farrar*, 57 L.T. 866.

#### Pawnbroker:—

- (iv.) **Q. B. D.**—*Detention of Person Offering Article in Pawn—Reasonable Suspicion that Article was Stolen—Question for Judge—Pawnbrokers' Act, 1872, s. 34.*—Plaintiff offered in pawn to defendant, a pawnbroker, a horseshoe pin set with seven diamonds and a gold ring. Defendant had received a list of stolen articles which included a pin of similar description and a gold ring. Plaintiff gave an account of how he obtained the articles. Defendant gave him in charge. It was proved that the articles were not stolen, and that plaintiff's account was true. He sued defendant for false imprisonment. *Held*, that the question of reasonable suspicion was for the judge, and that there was no evidence of absence of reasonable suspicion.—*Howard v. Clarke*, L.R. 20 Q.B.D. 558.

#### Poor Law:—

- (v.) **Q. B. D.**—*Audit—Neglect to Attend—Disobedience—4 & 5 Will. IV., c. 76, s. 96; 7 & 8 Vict., c. 101, s. 33.*—Mere neglect by overseers to attend an audit of parish accounts which has been duly notified by the auditor does not of itself constitute the offence of wilful disobedience.—*Halgate v. Brett*, 36 W.R. 471.

- (i.) **C. A.**—*Rating—Reformatory—Industrial Schools—Reformatory Schools Act, 1866.*—Decision of Q. B. D. (see Vol. 12, p. 109, ii.) affirmed.—*Tunncliffe v. Birkdale Overseers*, L.R. 20 Q.B.D. 450; 36 W.R. 360.
- (ii.) **Q. B. D.**—*Reimbursement of Guardians by Benefit Society—Trade Union—Trade Unions Act, 1871, s. 4—Divided Parishes Act, 1876, s. 23.*—A trade union is not a “benefit or friendly society” from which the guardians of the poor can claim reimbursement in respect of the maintenance of a pauper lunatic.—*Winder v. Guardians of Kingston-upon-Hull*, L.R. 20 Q.B.D. 412. \*
- (iii.) **Q. B. D.**—*Relief—Liability of Children to Maintain Mother Living with Second Husband—43 Eliz., c. 2, s. 7—4 & 5 Will. IV., c. 76, ss. 56, 57.*—The children of a woman by her first marriage are bound to contribute towards her maintenance after her second marriage, and while living with her second husband.—*Arrowsmith v. Dickenson*, L.R. 20 Q.B.D. 252; 36 W.R. 507.
- (iv.) **Q. B. D.**—*Removal of Pauper—Irremovability—Lunatic—Break of Residence—9 & 10 Vict., c. 66, s. 1.*—The husband of the pauper had resided in the respondent union for more than three years continuously. During part of the time the pauper was maintained in lunatic asylums as a pauper lunatic, but during lucid intervals, amounting in the aggregate to more than a year, she lived with her husband. The husband received no parish relief except in respect of the maintenance of his wife as a pauper lunatic. *Held*, that the periods during which the husband received no relief could be put together to make up a year's residence, and that he was therefore irremovable, and that the pauper took her husband's status of irremovability.—*Ipswich Guardians v. West Ham Guardians*, L.R. 20 Q.B.D. 407; 36 W.R. 473.

### Practice :—

- (v.) **Q. B. D.**—*Appeal—County Court—Judgment pro forma—13 & 14 Vict., c. 61, s. 14.*—A divisional court has no jurisdiction to hear a motion to set aside a judgment which has been entered by a county court judge *pro forma* in order to expedite an appeal.—*Chapman v. Withers*, 58 L.T. 24.
- (vi.) **C. A.**—*Appeal—County Court—Equitable Jurisdiction—Interlocutory Order—County Courts Equitable Jurisdiction Act, 1865, s. 18.*—An appeal upon a question of law lies from an interlocutory order of a county court in a proceeding within its equitable jurisdiction.—*Jonas v. Long*, L.R. 20 Q.B.D. 564; 36 W.R. 315.
- (vii.) **Q. B. D.**—*Appeal from County Court—Interpleader—Value over £20—County Courts Act, 1856.*—Where in an interpleader proceeding in a county court the claimant deposits the amount of the value of the goods claimed as fixed by appraisement, he cannot, if the amount is less than £20, claim to appeal on the ground that the value of the goods was over £20, and that a less amount was deposited because it was sufficient to satisfy the claim of the execution creditor.—*White v. Milne*, 58 L.T. 225.
- (viii.) **C. A.**—*Appeal—Patents, Designs, and Trade Marks Act, 1883, s. 31—Action for Infringement—Grant of Certificate.*—There is no appeal from the grant of a certificate that the validity of a patent came in question in an action for infringement.—*Haslam Foundry Co. v. Hall*, L.R. 20 Q.B.D. 491; 36 W.R. 407.
- (ix.) **C. A.**—*Appeal—Stannaries Court—Deposit—Stannaries Act, 1869, s. 32—Dismissal of Appeal by Consent—Application to Court.*—The provision requiring a deposit on appeals from the Stannaries Court is not abrogated by the Judicature Act or any Rule of Court, and is still

in force. An appeal once set down cannot be withdrawn by the appellant on merely obtaining the written consent of the respondent, but an application to the Court for leave to withdraw the appeal is necessary.—*In re West Devon Great Consols Mine*, 58 L.T. 61; 36 W.R. 842.

- (i.) **C. A.**—*Appeal—Order Against Executor to Pay Costs*—R.S.C., 1883, O. lxxv., r. 1.—An appeal lies from an order that a defendant executor should pay the costs of an administration action, on the ground that he had caused the litigation by neglect to furnish accounts.—*Lewis v. Pritchard*, 57 L.T. 858.
- (ii.) **Q. B. D.**—*Committal—Debtors Act, 1869, s. 4; 9 & 10 Vict., c. 95, s. 113.*—An order was made by a county court on A., as acting manager of a partnership, to deliver up some documents, and to pay a sum into court. A. delivered up the documents, but failed to pay the money. An order for his committal was made by the judge, which recited the terms of the original order, but did not specify any particular breach. *Held*, that the order was bad, as it did not specify in what particular A. was guilty of contempt, so as to allow him to purge the contempt.—*Reg. v. Lambeth Judge*, 36 W.R. 475.
- (iii.) **C. A.**—*Costs—Claim and Counter-claim—Event.*—Where there is a counter-claim, not a set-off, but in the nature of a cross action, and the plaintiff succeeds on the claim, and the defendant on the counter-claim, the costs of the claim and counter-claim respectively should be taxed as if each were independent actions, and the allocatur for costs should be given for the balance to the party in whose favour the balance is.—*Shrapnel v. Laing*, L.R. 20 Q.B.D. 334; 57 L.J. Q.B. 195; 36 W.R. 297.
- (iv.) **Ch. D.**—*Costs—Executors Costs of Attendance in Chambers—Application as to Fund in Court*—R.S.C., 1883, O. lxxv., rr. 1, 23.—A contingent legacy to an infant was paid into Court by the executor of the testator's will under the Legacy Duty Act. Summonses were taken out, by the guardians of the infant, asking for the income of the legacy, and by the next-of-kin of the testator, claiming the income as undisposed of. *Held*, that the executor's attendance at the hearing of the summons was unnecessary, and that he was not entitled to his costs as between solicitor and client; a fixed sum in lieu of costs being allowed him.—*Moore v. Bemrose; re Walters*, 58 L.T. 101.
- (v.) **Ch. D.**—*Costs—Judgment on Admissions—Motion or Summons*—R.S.C., 1883, O. xxxii., r. 6; O. xl., r. 1.—In an action for an injunction the defendants, by their statement of defence, offered to submit to an injunction in the terms of an interim injunction already obtained, "to be obtained on a summons to be issued for that purpose." The plaintiffs moved for judgment on admissions. *Held*, that they ought to have proceeded by summons, and could only have the costs of a summons.—*London Steam Dyeing Co. v. Digby*, 36 W.R. 497.
- (vi.) **C. A.**—*Costs—Following the Event—Claim and Counter-Claim*—R.S.C., 1883, O. lxxv., r. 1.—The defendant admitted the plaintiff's claim for £78, and obtained a verdict for £17 on a counter-claim. *Held*, that the judge had no discretion to prevent the costs from following the event.—*Wight v. Shaw*, 36 W.R. 408.
- (vii.) **Ch. D.**—*Costs—"Motion to Stand to Trial."*—Where a motion is ordered to stand over to the trial, and no mention is made of the costs of the motion then or at the trial, the judgment carries the costs of the motion.—*Gosnell v. Bishop*, 36 W.R. 505.

- (i.) **Ch. D.—Costs—Purchase of Charity Lands—Interim Investment—Petition or Summons—Service on Official Trustee—Lands Clauses Act, 1845, s. 80—R.S.C., 1883, O. lv., r. 2 (7).**—A scheme for the regulation of a charity provided that its lands should be vested in the official trustee of charity lands, and that all securities belonging to it should be transferred to the Official Trustees of Charitable Funds. Lands belonging to the charity were taken by compulsion and the purchase money paid into Court. After the title had been approved, but before conveyance, the charity petitioned for the interim investment of the money in consols to be carried to the account of the official trustees of charitable funds, and for payment of the dividends to the charity. *Held*, that having regard to the provisions of the scheme a petition was proper; *held*, also that the official trustees were properly served, and that the costs of serving them must be paid by the purchasers.—*Re Stafford's Charity*, 57 L.T. 846.
- (ii.) **Ch. D.—Costs—Solicitor and Client Costs.**—In an action by the vicar and churchwardens of a parish against a local committee to recover a small sum, which had been handed to the committee for a charitable purpose, subject, as the plaintiffs alleged, to a condition which had become incapable of fulfilment; *held*, on the plaintiffs failing to establish their case, that the Court had jurisdiction to order costs to be paid by the plaintiffs as between solicitor and client, and that the case was a proper one for such an order.—*Andrews v. Barnes*, 57 L.J. Ch. 208; 57 L.T. 790.
- (iii.) **Ch. D.—Counter-Claim—Added Parties—Default—Motion for Judgment—R.S.C., 1883, O. xxi., r. 12; O. xxvii., r. 11; O. lxvii., r. 4.**—The plaintiff in a counter-claim may proceed against defendants to the counter-claim who do not appear, in the same way as a plaintiff in an original action. The defendant to an action by which rights of common were claimed, counter-claimed against the plaintiffs and several added defendants, claiming an injunction on the ground of trespass. The added defendants did not appear, and the plaintiff in the counter-claim moved for judgment in default of appearance, and upon admissions. *Held*, that the motion must stand till trial.—*Verney v. Thomas; Thomas v. Verney*, 58 L.T. 20; 36 W.R. 398.
- (iv.) **Ch. D.—District Registry—Petition to Wind-up—Removal of Cause or Matter to London—R.S.C., 1883, O. xxxv., r. 16.**—The power of removing a cause or matter from a district registry to London, should be exercised if there is reason to suppose that business which ought not to be in the district registry has been taken there, or if there is a balance of convenience in favour of the removal.—*Re Neath & Bristol Steamship Co.*, 58 L.T. 180.
- (v.) **C. A.—Discovery—Affidavit of Documents—R.S.C., 1883, O. xxxi., r. 12.**—The Court has discretion to refuse discovery of documents where there is no reasonable prospect of its being of use. On an application for an affidavit of documents evidence ought not to be gone into; the Court will form its opinion from the pleadings, but any other proceeding in the action, as, *e.g.*, evidence used on a former occasion, may be looked at. In an action against a local board to restrain a nuisance from sewerage works, a general order for an affidavit of documents was refused, but, it appearing from evidence used on a motion for an interlocutory injunction that the defendants had passed resolutions bearing on the question of nuisance, and had had a correspondence with the Local Government Board about their sewerage, an order was made for an affidavit limited to such resolutions and correspondence.—*Downing v. Falmouth United Sewerage Board*, L.R. 37 Ch. D. 234; 57 L.J. Ch. 234; 58 L.T. 296; 36 W.R. 437.

- (i.) **Ch. D.**—*Discovery — Production of Documents — Unsealing sealed Documents.*—Where the defendants, in pursuance of liberty obtained to that effect, sealed up a large number of passages in books and documents produced by them, as being irrelevant; *held*, that the plaintiffs could not have a general order to unseal, but must establish by particular instances his right to compel the defendant to unseal.—*Jones v. Andrews*, 57 L.T. 843.
- (ii.) **C. A.**—*Discovery.*—In an action to restrain the sale of goods under an alleged infringement of the plaintiff's trade mark, and claiming damages or in the alternative an account of profits, it was ordered that the questions of fact arising in the action should be tried by a jury. *Held*, that the plaintiff, who had not made his election between damages and profits, was not entitled, before establishing his title to relief by the verdict of the jury, to discovery as to sales by the defendant, and to production of his books for that purpose.—*Fennessy v. Clark.*—L.R. 37 Ch. D. 184; 58 L.T. 289.
- (iii.) **Ch. D.**—*Discovery from Defendant before Defence—Affidavit of Documents —Discretion—R.S.C., 1883, O. xix., r. 6; O. xxxi., rr. 1, 2.*—The Court has a discretion as to ordering discovery, and there is no absolute rule that a defendant should not be ordered to make an affidavit of documents before delivery of his statement of defence.—*Edelston v. Russell*, 57 L.T. 927.
- (iv.) **Q. B. D.**—*Examination by Commission—R.S.C., 1883, O. xxxvii., r. 5.*—A plaintiff who desires to be examined on commission must make out by affidavit a strong *prima facie* case why he should not attend at the trial for examination, and the onus is not on the defendant in the first instance to shew why he should attend at the trial.—*Light v. Governor, &c., of Anticosti*, 58 L.T. 25.
- (v.) **C. A. & Q. B. D.**—*Mayor's Court—Certiorari—Time—Mayor's Court of London Procedure Act, 1857, ss. 16, 17, 19—Borough and Local Courts of Record Act, 1872, Sched. r. 12.*—An application for removal of an action from the Mayor's Court into the High Court was made more than one month after the service of the plaint, but before the action had been entered for trial. *Held*, that the application was in time.—*Prim v. Smith*, L.R. 20 Q.B.D. 554; 36 W.R. 530.
- (vi.) **Ch. D.**—*Order for Payment Out—Forgery—Payment to Wrong Person—Replacing Fund—Court of Chancery (Funds) Act, 1872, s. 5—Solicitor.*—A fund stood in court to the credit of A. an infant. X. who knew the circumstances retained Y., a solicitor, to get the fund out. X. produced an affidavit that A. was of age and procured a forged power of attorney for Y. to receive the fund. An order was accordingly made for payment out and the fund was received by Y. and paid over to X. on an authority purporting to be signed by A. but really forged. On A.'s coming of age the order for payment was discharged and the fund ordered to be paid to A. Y., who had never seen A. but trusted entirely to X., was ordered to replace the fund, and pay all costs.—*Slater v. Slater*, 58 L.T. 149.
- (vii.) **Ch. D.**—*Originating Summons—Legal Devise—Jurisdiction.*—There is no jurisdiction to decide on an originating summons a question of the construction of a legal devise.—*Davies v. Davies*, 58 L.T. 312.
- (viii.) **Ch. D.**—*Originating Summons—Service—Jurisdiction—R.S.C., 1883, O. lv., r. 5.*—An originating summons having been taken out by an executor for the purpose of deciding the question of the domicile of the testator, could not be served on one of the testator's children who was out of the jurisdiction. The property being of great value, *held*, that



the question could not be decided in the absence of such child. Leave given to issue a writ, and to serve it out of the jurisdiction, and to serve out of the jurisdiction notice of motion for a declaration deciding the question.—*Berners v. Bullen-Smith*, 57 L.T. 924.

- (i.) **C. A.**—*Palatine Court—Fund Paid in—Party Out of Jurisdiction—Jurisdiction to Transfer—Court of Chancery of Lancaster Act, 1854, s. 8.*—A fund had been paid into the Palatine Court under the Trustee Relief Act. A claimant to the fund, who resided out of the jurisdiction of the Palatine Court, applied to the Court of Appeal for a transfer of the matter to the High Court. *Held*, that there was no jurisdiction to make the order. *Semble*, that application should have been made to the Palatine Court for payment of the fund to the persons who paid it in, on their undertaking to pay it into the High Court, and then to apply to the High Court to determine the questions.—*Re Heywood*, 58 L.T. 292.
- (ii.) **C. A.**—*Particulars—Discovery—R.S.C., 1883, O. xix., r. 17.*—In an action by the executors of a deceased married woman against her husband for delivery of furniture alleged to be her separate property, *held*, that the defendant ought not to have particulars of the furniture claimed, until he had given discovery as to the furniture in his possession which he claimed as his own.—*Miller v. Harper*, 36 W.R. 454.
- (iii.) **C. A.**—*Parties—Partition—Person of Unsound Mind—Next Friend—Partition Act, 1868, s. 4; Partition Act, 1876, s. 6.*—A partition action may be brought by a person of unsound mind, not so found, by a next friend; but his request, by his next friend, for a sale, cannot, assuming that the next friend can make such a request, be acted on without the Court being satisfied that the sale would be for his benefit.—*Porter v. Porter*, L.R. 37 Ch. D. 420.
- (iv.) **Q. B. D.**—*Payment into Court—Tender in Part Satisfaction—Denial of Total Liability—Payment Out—Order Necessary—R.S.C., 1883, O. xxii., rr. 5 (c), 6 (c).*—In an action for wrongful dismissal, a year's salary being claimed, defendant denied liability for more than one month's salary, or alternately for more than three months' salary, which latter amount he tendered before action, and on plaintiff's refusal of acceptance, paid it into Court. Plaintiff obtained a verdict for one month's salary, but the total amount was paid out to him. *Held*, that the defence being in substance a denial of liability, the money should not have been paid out without an order, and that the excess over the one month's salary recovered must be refunded.—*Davys v. Richardson*, 36 W.R. 552.
- (v.) **Ch. D.**—*Petition—Trustee Acts—Reference to Sections.*—A petition under the Trustee Acts should contain in its last paragraph a reference to the particular sections under which it is proposed that the order prayed for should be made.—*In re Moss's Trusts*, L.R. 37 Ch. D. 513; 36 W.R. 316. *Re Hall's Settlement Trusts*, 58 L.T. 76.
- (vi.) **C. A.**—*Pleading—Striking-out—R.S.C., 1883, O. xix., r. 27.*—Where an action was brought to enforce an agreement for the compromise of a former action, and the plaintiff in his statement of claim repeated the allegations which were in issue in the former action, *held*, that such allegations must be struck out.—*Knowles v. Roberts*, 58 L.T. 259.
- (vii.) **Ch. D.**—*Pleading—R.S.C., 1883, O. xix., rr. 6, 7—Principal and Agent—Fraud—Particulars.*—A defendant does not waive his right to particulars by delivering his defence. The statement of claim in an action by a principal against his broker, to open settled accounts, alleged fraud, and that the plaintiff could not give particulars before discovery. An application by the defendant for particulars was ordered to stand over till a statement of defence had been put in. — *Sachs v. Spielman*, L.R. 37 Ch. D. 295; 58 L.T. 102; 36 W.R. 498.

- (i.) **Ch. D.**—*Receiver—Administration—Originating Summons*.—Where proceedings for administration are commenced by originating summons, a receiver may be applied for, by motion or summons, at any time after the issue of the summons.—*Drake v. Francke; re Francke*, 58 L.T. 305.
- (ii.) **C. A.**—*Service out of Jurisdiction—Discretion of Court—Res Judicata—R.S.C.*, 1883, O. xi., r. 1, sub-s. (f).—On an application for leave to serve a writ out of the jurisdiction, the plaintiff must satisfy the Court that he has a probable cause of action. A fund had been paid into Court in an action in which D. was the plaintiff. D. was resident in France. The fund was the subject of litigation in France between the plaintiffs and D., and the French Court had decided that D. was entitled to the control of the fund subject to the liability to account to the plaintiffs. The plaintiffs claimed an injunction to restrain D. from receiving or dealing with the fund. *Held*, that leave to serve the writ on D. out of the jurisdiction should be refused.—*Société Générale de Paris v. Dreyfus Brothers*, L.R. 37 Ch. D. 215; 57 L.J. Ch. 276.
- (iii.) **Q. B. D.**—*Service—Out of Jurisdiction—Defendant in Scotland—"Contract affecting Land"*—*R.S.C.*, 1883, O. xi., r. 1 (b).—Service out of the jurisdiction on a defendant domiciled, or ordinarily resident in Scotland, may be ordered in an action for alleged tenant's right and tenant's compensation in respect of a farm in England, and for alleged breach of agreement to pay such tenant's right and compensation.—*Kaye v. Sutherland*, L.R. 20 Q.B.D. 147; 57 L.J. Q.B. 68; 58 L.T. 56; 36 W.R. 508.
- (iv.) **C. A.**—*Repeated Frivolous Applications—Prevention of*.—Repeated frivolous applications for impeaching a judgment having been made by the same parties, the Court of Appeal made an order prohibiting any further application without the leave of the Court.—*Grepe v. Loam; Bulteel v. Grepe*, L.R. 37 Ch. D. 168; 58 L.T. 100.
- (v.) **Q. B. D.**—*Set-off—Action by Agent—Counter-claim against Principal—R.S.C.*, 1883, O. xix., r. 3.—In an action, by an agent, of trover and for goods sold and delivered, the defendant cannot set off a claim for unliquidated damages which he has on another transaction against the plaintiff's principal.—*Tagart & Co. v. Marcus & Co.*, 36 W.R. 469.
- (vi.) **C. A.**—*Third Party—Procedure*.—In an action against a company to replace stock which had been transferred in consequence of forged transfers, the company obtained leave to issue a third party notice against transferees of the stock. *Held*, that the third parties ought to have liberty to attend at the trial, and take such part as the judge should direct and be bound by the trial, but should not deliver a defence.—*Barton v. L. & N. W. R.*, 36 W.R. 452.
- (vii.) **C. A.**—*Trial by Jury—Action assigned to Chancery Division—Counter-Claim—Joinder of Cause of Action not so assigned—R.S.C.*, 1883, O. xxxvi., rr. 3, 4, 5, 6.—Decision of Ch. D. (see Vol. 13, p. 52, ii.) affirmed.—*Lynch v. Macdonald*, L.R. 37 Ch. D. 227; 58 L.T. 293.
- (viii.) **C. A.**—*Writ Specially Indorsed—Time for Defence—R.S.C.*, 1883, O. xxi., rr. 6, 7—*Irregular Judgment—O. lxx.*, r. 1.—When a writ of summons is specially indorsed the defendant has ten days from the time limited for appearance to deliver his defence, the indorsement being a statement of claim. When a judgment is obtained prematurely the defendant is entitled to have it set aside without terms. The fact that the defendant asked for costs in his summons to set aside the judgment does not entitle the Court to impose terms, but the Court having discretion as to costs can use it so as to impose terms. The fact that the defendant has paid money into Court in compliance with terms imposed by the Divisional Court, does not prevent him from appealing.—*Anlaby v. Prætorius*, 36 W.R. 487.



- (i.) **Ch. D.**—*Winding-up—Company—Affidavit—Time of Filing—Sunday*—*Companies Rules*, 1862, rr. 4, 74—*R.S.C.*, 1883, O. lxiv., r. 2.—In computing the time within which an affidavit verifying a winding-up petition must be filed Sunday is not to be reckoned.—*Re Yeoland Consols, Limited*, 58 L.T. 108.
- (ii.) **Ch. D.**—*Company—Winding-up—Summons—Charge of Misfeasance—Mode of Hearing*.—A summons by the liquidator of a company to make directors liable for misfeasance, where numerous affidavits have been filed, ought not to be heard as a witness action, but as a summons on affidavit evidence, and any cross-examination on the affidavits ought to be before one of the examiners.—*Re the Faure Electric Accumulator Company*, 58 L.T. 42.
- (iii.) **Ch. D.**—*Company—Action to Rescind Contract to take Shares—Restraint of Forfeiture*.—A shareholder having commenced an action to rescind his contract to take shares, paid into Court the sum demanded for calls, and moved to restrain the company from declaring the shares forfeited. *Held*, that he ought to have paid the money to the company without prejudice to any question.—*Ripley v. Paper Bottle Co.*, 57 L.J. Ch. 327.

### Principal and Agent:—

- (iv.) **C. A.**—*Stockbroker—Rules of Stock Exchange—Undertaking by Principal to Indemnify Agent*.—A person who authorises a broker to sell shares on the Stock Exchange authorises him to make a contract according to the rules in force there, and undertakes to indemnify the broker against any liability incurred by him under those rules, unless the rules relied on by the broker are either illegal, or unreasonable and not known to the principal.—*Harker v. Edwards*, 57 L.J. Q.B. 147.

### Public Health Act, 1875:—

- (v.) **Q. B. D.**—*Arbitration—Costs*.—An arbitrator or umpire appointed to determine a dispute under sections 179 and 180, must in his award deal with the costs of the reference, which are placed in his discretion, and if he fails to do so the Court will remit the award to him.—*Peake v. Finchley Local Board*, 57 L.T. 882.

### Railway:—

- (vi.) **C. A.**—*Debenture Stock Register—Right of Inspection—Copies—Companies Clauses Act*, 1845, s. 45—*Companies Clauses Act*, 1863, s. 28.—The statutory right of a shareholder in a railway company to inspect the register of mortgages, includes a right to take copies of and extracts from the register.—*Mutler v. Eastern and Midlands Railway Co.*, 36 W.R. 401.
- (vii.) **C. A. & Ch. D.**—*“Receiver”—Priorities—Railway Companies Act*, 1867, s. 4.—A judgment creditor of a railway company does not obtain priority over other creditors by obtaining a receivership order. Successive receivership orders cannot be made.—*In re Mersey Railway*, 57 L.J. Ch. 283; 58 L.T. 179; 36 W.R. 372.
- (viii.) **C. A.**—*Minerals under Line—Bona fide Intention to Work—Notice by Owner—Injunction—Railways Clauses Act*, 1845, ss. 6, 77, 78, 79.—The owner of minerals under a railway who had given notice of his desire to work the minerals, and had not received counter-notice of the willingness of the company to treat for the purchase of the minerals, *held*, not liable to be restrained from working upon allegations (unproved) by the company that he had no *bona fide* intention of at once working the minerals, and that the minerals could not be beneficially worked. The

mineral owner giving such notice must be desirous of working the minerals within a reasonable time, and it is not necessary that he should contemplate working them himself, as distinguished from leasing them.—*M. R. v. Robinson*, L.R. 37 Ch. D. 386; 57 L.T. 901.

- (i.) **C. A.**—*Roadway over Bridge—Level Unaltered—Liability to Repair—Railways Clauses Act, 1845, s. 46.*—Decision of Q. B. D. (see Vol. 13, p. 19, iv.) affirmed.—*Mayor, &c., of Bury v. L. & Y. R.*, L.R. 20 Q.B.D. 485; 36 W.R. 491.
- (ii.) **Q. B. D.**—*Injury to Cattle—Negligence—Onus of Proof.*—The plaintiff safely loaded cattle on a truck for conveyance by the defendant company. On arrival some of the cattle were found injured. The plaintiff proved the injuries and gave his opinion that they were caused by undue shunting and jerking of the train. *Held*, that the onus of proof being on the plaintiff, and no affirmative evidence of negligence having been given by him, the defendants were entitled to judgment.—*Smith v. M. R.*, 57 L.T. 812.
- (iii.) **H. L.**—*Luggage Left in Charge of Porter—Negligence.*—Decision of C. A. (see Vol. 11, p. 129, iii.) affirmed.—*G. W. R. v. Bunch*, 58 L.T. 128.
- (iv.) **Q. B. D.**—*Passenger's Luggage—Delivery to Passenger—Termination of Company's Risk.*—When a passenger's luggage is carried in the same train with him, but not under his control, the company must keep it ready for delivery at the usual place until the owner can, with the exercise of due diligence, receive it; but their liability as carriers terminates after a reasonable time has been allowed for him to claim it.—*Firth v. N. E. R.*, 36 W.R. 467.

### Registration:—

- (v.) **Q. B.**—*Borough Note—Notice of Objection—Description of Objector—Registration Act, 1885, s. 18, Sched. II., Form 1, No. 2.*—A notice of objection to a voter was signed "R. B., of 624, W. Road, on the list of Parliamentary voters for the Parliamentary borough of B. and C." *Held*, that the omission of the name of the parish, on the list of Parliamentary voters of which the name of the objector was, constituted a substantial defect and invalidated the notice.—*Wood v. Chandler*, L.R. 20 Q.B.D. 297; 57 L.J. Q.B. 126; 36 W.R. 522.
- (vi.) **Q. B. D.**—*County Vote—Notice of Objection—Description of Place of Abode of Objector—Registration Act, 1885, s. 18, Sched. II., Form 1, No. 2.*—A notice of objection to a county vote was signed "G. C., of Churchyard, on the list of Parliamentary voters for the parish of Petersfield." *Held*, that the place of abode was insufficiently described.—*Humphrey v. Earle*, L.R. 20 Q.B.D. 294; 57 L.J. Q.B. 124; 36 W.R. 510.
- (vii.) **Q. B. D.**—*Borough Vote—Residence of Freeman—Notice of Objection—Power of Amendment—Reform Act, 1832, s. 32—Parliamentary and Municipal Registration Act, 1878, s. 28, sub-s. 2.*—A notice of objection was served on a freeman of Norwich, dated August 12, and stating as the objection, "That you do not reside at 12, Clifton Street, Norwich." The revising barrister held that the notice was sufficient, but amended it by substituting the words, "That you have not resided at 12, Clifton Street, Norwich, for six calendar months next preceding the 15th day of July last, and that you have not throughout that period resided within the city of Norwich or seven miles thereof." *Held*, that the notice was bad, and that the defect was not a "mistake," so that the revising barrister had no power to amend.—*Bridges v. Miller*, L.R. 20 Q.B.D. 287; 57 L.J. Q.B. 125; 36 W.R. 509.

- (i.) **Q. B. D.**—*Borough Vote—Service of Notice of Objection*—"Ordinary Course of Post"—6 Vict., c. 18, ss. 17, 100.—Notices of objection to borough voters were addressed to barracks in which the voters resided, and were posted in time to have been delivered on August 20 by postmen in the ordinary course of post at places within the borough other than the barracks. Letters to the barracks were never delivered by postmen, but were taken from the post-office by orderlies. On the evening of August 20 the letters addressed to the barracks were taken from the post-office by orderlies. Some of them were distributed at the barracks on August 20, some on August 21, while as to others there was no evidence as to the time of distribution. *Held*, that the facts did not shew that there was any "ordinary course of post" to the barracks, and that therefore there was no evidence that the notices had been served on August 20. — *Childs v. Com*, L.R. 20 Q.B.D. 290; 36 W.R. 505.
- (ii.) **Q. B. D.**—*Borough Vote—Disqualification—Other Alms—Reform Act, 1832, s. 36.*—The claimant during the qualifying period resided in an almshouse, and received a weekly allowance from the charity to which the almshouses belonged. The charity was limited by Act of Parliament to persons "unable to maintain themselves by their own exertions." *Held*, that the claimant was disqualified.—*Edwards v. Lloyd*, L.R. 20 Q.B.D. 302.
- (iii.) **Q. B. D.**—*Borough Vote—Freeholder—Residence—Reform Act, 1832, s. 31.*—A freeholder in Exeter had a bed room kept for his exclusive use in his father's house in Exeter. He was in employment in London during the whole of the qualifying period except three weeks, during which he was out of employment and resided in his father's house. *Held*, that he was not entitled to a vote for the borough of Exeter.—*Beal v. Town Clerk of Exeter*, L.R. 20 Q.B.D. 300; 57 L.J. Q.B. 128; 36 W.R. 507.
- (iv.) **Q. B. D.**—*Borough Vote—Occupation—Militiaman—Compulsory Absence on Duty—Army Act, 1881, ss. 15, 176.*—A militiaman occupied with his family a house within a borough. He was absent during the annual training for twenty-six days of the qualifying year. He returned with the leave of his officer at intervals during the training, and could have returned every night had the distance been less, as his duties did not require his attendance. His family occupied the house all the time. *Held*, that the residence had been broken.—*Donoghue v. Brook*, 57 L.J. Q.B. 122.
- (v.) **Q. B. D.**—*Service Franchise Municipal Vote—Representation of the People Act, 1884, s. 3—Municipal Corporations Act, 1882, s. 9.*—Occupation of a dwelling-house by virtue of an office, service, or employment, is no qualification for the municipal franchise.—*M'Clean v. Prichard*, L.R. 20 Q.B.D. 285; 36 W.R. 508.

### Restraint of Trade :—

- (vi.) **Ch. D.**—*Medical Practice—Competition.*—An agreement for the sale of a medical practice provided that the vendor should not solicit any patient within a certain radius, or otherwise directly or indirectly enter into competition with the purchaser. *Held*, that the vendor was precluded from attending patients within the area, though he did not solicit them. — *Rogers v. Drury*, 36 W.R. 496.

### Revenue :—

- (vii.) **Q. B. D.**—*Stamp Duty—33 & 34 Vict., c. 97, s. 49, and Schedules—Agreement or Promissory Note.*—A policy providing for the payment of £100 on the 18th of May, 1967, or, upon notice by the insured, of the

surrender value according to certain tables, is chargeable with stamp duty as an agreement, and not as a promissory note. A policy of assurance on a mortgage, securing payment of principal and interest, is chargeable with duty as an agreement, and not as a policy of insurance. —*Commissioners of Inland Revenue v. Mortgage Insurance Corporation*, 57 L.J. Q.B. 174; 36 W.R. 474.

### Sale of Unsound Meat:—

- (i.) **Q. B. D.**—*Person "to whom the Same Belongs"*—*Public Health Act*, 1875, ss. 116, 117.—The under-bailiff on an estate, acting under the orders of the head bailiff, consigned in his own name unsound meat to P., and communicated with a butcher at P. as to the sale of it. The meat was seized and condemned while at P. station. *Held*, that the under-bailiff could not be convicted as the person to whom the meat belonged.—*Newton v. Monkcom*, 58 L.T. 231.

### Settled Estate:—

- (ii.) **Ch. D.**—*Lease—Permissive Waste*—"Wear and Tear and Damage by Tempest"—*Settled Estates Act*, 1877, s. 46.—A lease of a settled estate by the tenant for life, containing a covenant to repair, "fair wear and tear and damage by tempest excepted," is not "made without impeachment of waste," and is not in conformity with the *Settled Estates Act*, 1887.—*Davies v. Davies*, 36 W.R. 399.

### Ship:—

- (iii.) **C. A.**—*Action in Rem—Arrest of Ship—Lien—Admiralty Court Act*, 1861, ss. 4, 35.—When a ship has been arrested in an action *in rem* she is a security in the hands of the Court for the plaintiff's claim as subsequently determined, and the security is not affected by the bankruptcy or liquidation of the shipowner after the arrest.—*The Cella*, 36 W.R. 540.
- (iv.) **C. A.**—*Bill of Lading—Contract in—Evidence to Vary—Bills of Lading Act*, 1855, s. 1.—A bill of lading stated that goods were shipped at Fiume, to be delivered at Dunkirk, on a vessel bound for Dunkirk, with liberty to call at any ports in any order. The vessel sailed for Glasgow, and was lost in the Clyde. *Held*, in an action by indorsees of the bill of lading for non-delivery, that the contract was that the vessel should go direct to Dunkirk, with liberty to call at any ports substantially in her course; and evidence that the indorsees knew that she was intended to go to Glasgow was rejected.—*Leduc & Co. v. Ward*, L.R. 20 Q.B.D. 475; 36 W.R. 537.
- (v.) **P. D.**—*Collision—Consequential Damages—Verbal Agreement for Employment*.—The loss of profit which the owner would, but for a collision, have derived under a contract, whether verbal or in writing, for the future employment of his ship, must be taken into account in estimating his damages for the collision.—*The Argentino*, L.R. 13 P.D. 61; 57 L.J. P. 25.
- (vi.) **P. D.**—*Collision—Stern-Light—Sufficiency*.—One of the ordinary binnacle lights was temporarily used as a stern-light. *Held*, that in the absence of affirmative evidence of its efficiency on the particular occasion it could not be deemed to be a sufficient light.—*The Patroclus*, L.R. 13 P.D. 54.
- (vii.) **P. D.**—*Collision—Overtaken Ship—Flare-up-Light—Regulations, Art. 11*.—The single exhibition, by a vessel which is being overtaken, of a flare-up-light, nine or ten minutes before the collision, is not a sufficient

exhibition; the light should be exhibited from time to time as long as the vessel to which it is shewn continues to be an overtaking vessel.—*The Essequibo*, L.R. 13 P.D. 51; 57 L.J. P. 29.

- (i.) **C. A.**—*Collision—Overtaken Vessel—Duty of—Regulations for Preventing Collisions at Sea, Arts. 22, 23.*—The regulations only apply when two vessels have approached so near to one another that if either of them does anything contrary to the regulations, risk of collision will be involved. *Semble*, that a vessel, which is being overtaken is not to blame if she alters her course at such a distance ahead of the overtaking vessel that the latter can, by exercise of reasonable care, keep out of her way. *Quære*, what is the duty of a vessel which is being overtaken as to keeping her course, when it becomes necessary for her to manœuvre to avoid another vessel.—*The Banshee*, 57 L.T. 841.
- (ii.) **P. D.**—*Collisions—Regulations for Preventing Collisions at Sea, Art. 11.*—The regulations are infringed if a stern-light is carried in any way other than is necessary to warn overtaking vessels, as, e.g., if it is visible over part of the area of a side-light.—*The Palinurus*, L.R. 13 P.D. 14; 57 L.J. P. 21.
- (iii.) **P. D.**—*Collision—Tug—Liability of vessel in Tow.*—Under an ordinary contract of towage the tug is under the control of the vessel in tow, which is liable for the wrongful acts of the tug, unless it had not time to control them. A vessel in tow held liable for damages done by the tug only, in a collision which might have been avoided if there had been a proper look-out on the vessel in tow.—*The Niobe*, L.R. 13 P.D. 55.
- (iv.) **P. C.**—*Insurance—Total Loss—Salvage—Sale under Decree of Court.*—A sale by a decree of a court of competent jurisdiction by which the right of property and possession is transferred from the owner to a purchaser constitutes a total loss within the meaning of a policy of marine insurance. No distinction can be drawn between a sale on a capture and a sale by the decree of court for the expenses of salvage services.—*Cossman v. West*; *Cossman v. British America Assurance Company*, 57 L.J. P.C. 17; 58 L.T. 122.
- (v.) **P. D.**—*Mortgage—Claim for Wages—Priority—Admiralty Courts Act, 1861, s. 4.*—A claim by the plaintiff in an action for necessaries, even though it includes wages paid to a ship's crew at the request of the owner, is not entitled to priority over a mortgagee's claim. *Semble*, that priority might have been gained by obtaining previous permission from the Court to make the payment.—*The Lyons*, 57 L.T. 818.
- (vi.) **Q. B. D.**—*Mortgagee in Possession—Right to Freight.*—The mortgagee of a majority of the shares in a ship, having taken possession of the ship, is entitled to receive all freight due.—*Japp v. Campbell*, 57 L.J. Q.B. 79.
- (vii.) **P. D.**—*Practice—Action in rem—Default of Defendant—Statement of Claim—R.S.C., 1883, O. xiii., r. 12.*—Where the plaintiff in an action *in rem*, in which the defendant made default, had not delivered a statement of claim, but had complied with all the other formalities entitling him to judgment, the Court gave judgment in his favour, it appearing that the writ, though not specially indorsed, contained particulars of the claim.—*The Hulda*, 58 L.T. 29.
- (viii.) **P. D.**—*Practice—Costs—Co-Defendants.*—A barge in tow of the ship A. was damaged by a collision with the B. The owners of the barge sued the owners of both vessels, and at the trial the A. was found alone to blame. *Held*, that the owner of the A., having endeavoured to throw the blame on the B., must pay her costs as well as the plaintiffs'.—*The River Lagan*, 57 L.J. P. 28.

- (i.) **P. D.—Salvage—Agreement for definite Sum—Liability of Shipowners.**—Where the master of a ship has made an agreement, which is neither unreasonable nor inequitable, for the payment of a definite sum for salvage services, the owners of the salved ship are liable in the first place for the whole amount, and not only for the proportion payable in respect of the ship.—*The Prinz Heinrich*, L.R. 13 P.D. 31; 57 L.J. P. 17; 36 W.R. 511.
- (ii.) **C. A.—Salvage—Amount—Appeal.**—The Court of Appeal will increase or diminish the amount of salvage awarded where it appears that the judge below has misapprehended the evidence, and given a wrong award. Amount of award increased in a case where the judge had misapprehended the evidence, and under-estimated the danger which existed at the time of the salvage services.—*The Star of Persia*, 57 L.T. 839.
- (iii.) **P. D.—Shares—Purchaser—Liability—Co-Owners.**—The purchaser of shares in a ship, which at the time of the sale is on a voyage, is liable for the expenses of the voyage, and the outfit for it, and entitled to a share in the freight. Part-owners who do not dissent from the employment of a ship, and are aware that others have dissented, are liable to bear expenses, and entitled to share profits, in the proportion which their shares bear to the whole number after deduction of the shares of dissenting owners. Part-owners who have given notice to the managing owner that they declined to be bound by any new charter-party are bound by a charter-party which he had signed on the day on which he received the notice, though it was not yet signed by the charterer.—*The Vindobala*, L.R. 13 P.D. 42.
- (iv.) **P. D.—Wages—Agreement for Service—Breach by Employer—Defective Food—General Damages—Merchant Shipping Act, 1854, ss. 187, 223.**—In an action by seamen for wages and breach of contract, where the plaintiffs proved breaches of contract by the employers, whereby the plaintiffs were supplied with defective provisions, and were exposed to great dangers and hardships, the Court awarded the wages as claimed, maximum compensation of 1s. 8d. per day in respect of food, and general damages in respect of hardships.—*The Justitia*, 57 L.T. 816.
- (v.) **P. D.—Wreck—Expenses of Raising—Thames Conservancy Act, 1857, s. 86.**—In ascertaining the expense of raising a wreck, the cost of a special apparatus provided by the conservators for removing wrecks, and used on the occasion, may be taken into account; such cost comprising interest on capital, repairs, a depreciation fund, and insurance against risk; the charge for insurance cannot be estimated by reference to the tonnage of the wreck raised. If it appears that the work would have been done more cheaply by a less expensive apparatus, the charges must be based on the lower rate.—*The Harrington*, L.R. 13 P.D. 48.

**Slander :—**

- (vi.) **Q. B. D.—Imputation of Indictable Offence—Larceny of Wife's Property—Married Women's Property Act, 1882, s. 12.**—In an action for slander the words complained of were that the plaintiff had robbed his wife of £75 before her removal to a lunatic asylum. *Held*, that as the words did not impute to the plaintiff that he stole his wife's money while they were living apart or when he was about to leave or desert her, they were not actionable, as they did not impute an indictable offence.—*Lemon v. Simmons*, 36 W.R. 351.

**Solicitor :—**

- (vii.) **Q. B. D.—Bill of Costs—Order to Deliver for Taxation—Business not Transacted in any Court—Solicitors' Act, 1843, s. 37—Judicature Act, 1873, s. 16.**—The Judges of the Queen's Bench Division have no



jurisdiction to order a solicitor to deliver his bill of costs for taxation, where it relates to business no part of which was transacted in any court of law or equity.—*Re Pollard*, L.R. 20 Q.B D. 160; 57 L.T. 930; 36 W.R. 515.

- (i.) **C. A.**—*Costs—Taxation—Agency Charges—Part of Bill—Solicitors' Act, 1843, s. 37.*—A London agent delivered his bill relating to several matters to a country solicitor. *Held*, that the part of the bill relating to one matter could be taxed; the country solicitor undertaking to pay within a short time (subject to an undertaking to refund) the amount claimed by the bill.—*In re Johnson and Weatherall*, L.R. 37 Ch. D. 433; 57 L.J. Ch. 306; 36 W.R. 374.
- (ii.) **Ch. D.**—*Costs—Mortgagee's Solicitors—Solicitors Remuneration Act, 1881, General Order, r. 2 (c), Sched. II.*—In an administration action an order was obtained for the sale of leaseholds. The particulars and conditions of sale were sent to the mortgagees, who were not parties, "for your perusal." The mortgagees undertook to concur on condition of their debt and expenses being provided for. *Held*, that on the taxation of the costs of the mortgagee's solicitor the taxing master had a discretion as to the amount of the fee for perusing.—*Rees v. Rees*; *re Rees*, 58 L.T. 68.
- (iii.) **C. A.**—*Costs—Lien—London Agent—Property Recovered or Preserved—Proceedings in any Court of Justice—Solicitors' Act, 1860, s. 28.*—A solicitor's statutory lien for costs on property recovered or preserved, does not apply to the costs of proceedings before an arbitrator or jury for compensation under the Lands Clauses Act. The London agent of a country solicitor is not entitled to the statutory charge against the original client. A solicitor who acts for both mortgagor and mortgagee does not thereby lose his statutory charge.—*Macfarlane v. Lister*, L.R. 37 Ch. D. 88; 57 L.J. Ch. 92; 58 L.T. 201.
- (iv.) **Q. B. D.**—*Retainer—Extent of Authority.*—The retainer of a solicitor to bring an action does not authorise him to contest an interpleader issue as to the property in goods seized under an execution levied to satisfy the judgment in the action.—*James v. Ricknell*, L.R. 20 Q.B.D. 164; 57 L.J. Q.B. 113; 58 L.T. 278; 36 W.R. 280.  
See Practice, p. 85, vi.

### Tenant For Life:—

- (v.) **Ch. D.**—*Timber—Costs of Tenant for Life—Solicitor and Client Costs—Settled Land Act, 1882, s. 21, sub-ss. 9, 10.*—A tenant for life under a will had power to sell timber which was beginning to decay. *Held*, upon a sale of the land and the timber, some of which was beginning to decay, but had not been severed, that the tenant for life was not entitled to any part of the purchase money. Costs properly incurred by the tenant for life in defending an action to restrain the exercise of his power of sale are payable out of capital moneys, and include the difference between his solicitor and client costs and party and party costs.—*Llewellyn v. Williams*, L.R. 37 Ch. D. 317; 57 L.J. Ch. 316; 58 L.T. 152; 36 W.R. 347.

### Trade Mark:—

- (vi.) **Ch. D.**—*Registration—Objection not Taken Before Controller—Fancy Word—Previously Registered Marks—Patents, Designs, and Trade Marks Act, 1883, ss. 62, 64, sub-ss. 1 (c), 72.*—On an application to the Court to order the registration of a trade mark any objection may be raised though not taken before the controller. "Sanitas" is not a

fancy word<sup>r</sup> so as to be proper for registration. The fact that two previously registered marks contained the word "Sanitas" is a sufficient objection to the registration of that word.—*Re Sanitas Co.; Trade Mark Sanitas*, 58 L.T. 166.

**Trade Name :—**

- (i.) **C. A.**—*Newspaper—Injunction.*—Injunction to restrain the issue of an evening paper, called *The Evening Post*, refused, on the ground that the plaintiff, the owner of the *Morning Post*, would not be injured by the public being led to suppose that there was a connection between the two papers.—*Borthwick v. The Evening Post*, L.R. 37 Ch. D. 449; 58 L.T. 252; 36 W.R. 434.

**Trustee :—**

- (ii.) **Ch. D.** — *Appointment of New Trustees—Validity—Private Act—Approbation of Court—Conveyancing Act, 1881, s. 31.*—A private Act passed in 1869 provided that section 27 of Lord Cranworth's Act should be deemed to apply to the trusteeship of the estates comprised therein; "provided that every new trustee should be appointed with the approbation of the Court." In 1886 new trustees were appointed by the old trustees, "under the power vested in them by statute." The deed contained the declaration vesting the estates in the new trustees, but the appointment was not made with the approbation of the Court. *Held*, that the deed must be construed as if the special provision in the private Act had formed part of Lord Cranworth's Act; that as Lord Cranworth's Act had been repealed, that provision could not be added to the general power of appointment contained in the Conveyancing Act, 1881, and that the appointment was therefore good.—*In re Lloyd's Trustees*, 57 L.J. Ch. 246.
- (iii.) **Ch. D.** — *Appointment—Persons Beneficially Interested—Donee of Power of Appointment of Trustees.*—There is no fixed rule that the Court will not appoint as trustees *cestuis-que-trust* or donees of a power of appointment of trustees. A *cestui-que-trust* who was donee of such power was appointed new trustee of a will, where the testator had appointed as trustees persons beneficially interested, and had empowered the persons beneficially interested for the time being "to appoint one or more persons to supply the vacancy on their death or retirement."—*Tempest v. Lord Camoys*, 58 L.T. 221.
- (iv.) **Ch. D.** — *Appointment—Separate Trustees of Part of Property—Trustee Act, 1850, s. 32—Conveyancing Act, 1882, s. 5.*—The Court has power under the Trustee Act, 1850, to allow trustees to retire from a part of the trusts, and to appoint new trustees of that part when it is expedient to do so, this power being independent of that conferred by the Conveyancing Act, 1882.—*In re Moss's Trusts*, 36 W.R. 316.
- (v.) **C. A.**—*Breach of Trust—Indemnity—Concurrence in Breach of Trust.*—A. was sole trustee of a fund held in trust for B. for life, then for Mrs. B. for life, then in the events which happened for her appointees by will, or in default for her next-of-kin. A., at the request of B. and his wife, raised £5,000, and paid £1,000 to each of the adult daughters of C., and £1,000 to C. in trust for his infant daughter. B. covenanted to indemnify A. against "all consequences." B.'s wife died intestate, and her next-of-kin were A. and C. *Held*, that A. could not recover his loss by an action on the covenant against B.'s representatives, and that C., having actively concurred in the breach of trust could make no claim in respect of his loss.—*Evans v. Benyon*, L.R. 37 Ch. D. 329.



- (i.) **Ch. D.**—*Devolution of Trust Estate—Copyhold—Conveyancing Act, 1881, s. 80—Copyhold Act, 1887.*—A sole trustee of copyholds having died between the commencement of the Conveyancing Act, 1881, and the passing of the Copyhold Act, 1887, the legal estate in the copyholds was, on the passing of the Copyhold Act, 1887, divested from his personal representatives, and vested in his customary heir or devisee.—*In re Mills' Trusts*, L.R. 37 Ch. D. 312; 36 W.R. 393.
- (ii.) **Ch. D.**—*Investment—Consols—Power to Sell—National Debt (Conversion) Act, 1888, ss. 8, 26.*—Trustees were directed to invest a sum in £3 per cent. consols, to answer annuities, with no power to change or vary the investment. *Held* that they might sell the £3 per cent. consols and invest the proceeds in any securities for the time being authorised for cash under the control of the Court.—*In re Tuckett's Trusts*, 36 W.R. 542.
- (iii.) **Ch. D.**—*Vesting Order—Mortgagee—Trustee of Mortgage Money—Out of Jurisdiction—Trustee Act, 1850, s. 9.*—A mortgage was transferred to A. who was a trustee of the mortgage money for B. but without any declaration of trust. A. became bankrupt, went without the jurisdiction, and could not be found. On a petition by B. and the mortgagor, A.'s trustee in bankruptcy admitting that he took no beneficial interest, *held*, that an order could be made vesting A.'s estate in B.—*In re Barber's Mortgage Trusts*, 58 L.T. 303.

#### Vendor and Purchaser:—

- (iv.) **Ch. D.**—*Apportionment of Charges—Private Road—Public Health Act, 1875, ss. 150, 257.*—Houses abutting on a private road were sold under an open contract. Work had been done on the road by the local board at the date of the sale; the final demand for payment of the sum apportioned in respect of the houses was served after the time at which the purchase ought to have been completed. *Held*, that the sum became a charge on the houses on the completion of the work, and ought to be paid by the vendor.—*In re Bettesworth and Richter*, L.R. 37 Ch. D. 535; 36 W.R. 544.
- (v.) **C. A.**—*Lease—Agreement to Purchase—Onerous Covenants—Notice.*—Under an agreement to purchase an existing lease, the purchaser is not affected by constructive notice of the covenants in the lease, and is not bound to complete if it contains onerous and unusual covenants, unless he had a fair opportunity of ascertaining the terms of such covenants before the agreement was made.—*Reeve v. Berridge*, L.R. 20 Q.B.D. 523; 36 W.R. 517.
- (vi.) **Ch. D.**—*Sale by Tenant for Life—Trustees—Want of—Defect of Conveyancing—Settled Land Act, 1882.*—Where a tenant for life purports to sell under the powers of the Settled Land Act, the fact that there are no trustees for the purposes of the Act is a defect of conveyancing not of title, and unless the time fixed for the completion is of the essence of the contract the purchaser cannot put an end to the contract, but must allow a reasonable time for supplying the deficiency.—*Hatten v. Russell*, 58 L.T. 271; 36 W.R. 317.
- (vii.) **Ch. D.**—*Sale with Possession—Advantage Incident to Reversion.*—A house was sold with vacant possession the purchase to be completed on March 25th. The house had been let on a lease which determined on that day, and the vendor had previously proved in the lessee's bankruptcy for damages for breach of a covenant to keep in repair. *Held*, that the purchaser, having bought the house as it stood, and not the reversion, was not entitled to the sum to be recovered, which was incident to the reversion.—*In re Edie & Brown's Contract*, 58 L.T. 308.

- (i.) **Ch. D.**—*Specific Performance—Forfeiture of Deposit—Costs.*—In an action by the vendor for specific performance of an agreement to purchase, the title having been accepted, and the purchaser having made default, where the writ has claimed in the alternative a declaration of the vendor's right to forfeit the deposit and resell, in accordance with a condition to that effect; *held*, that, even when the defendant had not appeared, such a declaration might be made, but that the plaintiff should be ordered to pay the costs of the action.—*Kingdon v. Kirk*, L.R. 37 Ch. D. 141; 57 L.J. Ch. 328.
- (ii.) **C. A.**—*Summons—Jurisdiction.*—There is no jurisdiction to determine, on a vendor and purchaser summons, a question which does not concern the purchaser.—*In re Tippet's and Newbold's Contract*, L.R. 37 Ch. D. 444.

**Will :—**

- (iii.) **Ch. D.**—*Appointment—General Power—Revocation—Wills Act, s. 27.*—A testator executed a "testamentary appointment" under a general power. He afterwards executed a will containing a residuary bequest, and not referring to the power or the testamentary appointment. *Held*, that the will operated as an execution of the power, and a revocation of the testamentary appointment.—*White v. Randolph; in re Gibbes' Settlement*, L.R. 37 Ch. D. 143; 58 L.T. 11.
- (iv.) **Ch. D.**—*Ademption—Double Portions—Bequest of Business.*—A testator bequeathed his residue (including a business which he directed to be sold) for the benefit of his children equally. Subsequently he assigned his business to one son on trusts, which provided for the admission of another son on attaining full age, the repayment to the father of a sum temporarily employed in the business, and the payment to him of a weekly sum for life. *Held*, that the shares of the sons were adeemed to the extent of the value of the property assigned in trust for them at the time of the assignment, which must be brought into account in the distribution of the residue.—*Vickers v. Vickers*, L.R. 37 Ch. D. 525; 36 W.R. 545.
- (v.) **Ch. D.**—*Ademption—Lunacy.*—A testator bequeathed a policy on his own life on trust to pay two debts due from him, and to pay the balance of the moneys to be received on the policy to J. The testator paid one debt; he became lunatic, and his committee paid the other debt. *Held*, that J. was entitled to the policy less the amount of the debt paid by the committee.—*Larking v. Larking*, L.R. 37 Ch. D. 310; 57 L.J. Ch. 282.
- (vi.) **Ch. D.**—*Charitable Bequest—Cy-près.*—Bequest of a capital sum to the Royal Lifeboat Institution on condition that it should construct and maintain tubular lifeboats at A. and B., with a gift over in case the Institution should decline to construct the lifeboats. The Institution having accepted the trust was held entitled to a transfer of the fund. It appeared however that the coast at A. was sufficiently supplied with lifeboats, and that a tubular lifeboat was not required for that station. *Held* that the Institution might place a tubular lifeboat at C. instead of at A.—*Re Richardson's Will*, 58 L.T. 45.
- (vii.) **Ch. D.**—*Charitable Bequest—Forfeiture—Perpetuity—General Charitable Gift.*—Bequest of a sum on trust to pay the income to the incumbent of a certain church and his successors so long as they allowed the sittings in the church to be occupied free from pew rents; with a direction that in case any incumbent should receive payment in respect of sittings the

money should fall into the residue of the estate. *Held*, that the condition of forfeiture was not void on the ground of perpetuity; and that there was not a gift for the general purpose of charity, with respect to which a scheme could be made.—*Randell v. Dixon*, 36 W.R. 543.

- (i.) **Ch. D.**—*Construction—Bequest of Share in Partnership—Debt due from Partnership.*—A testator bequeathed all his “share, right, and interest” in the partnership to which he belonged. *Held*, that the bequest did not include a debt which was due to the testator from the partnership, on which interest was paid, in accordance with the partnership articles, and subsequent agreement between the partners.—*Simpson v. Beard*, 36 W.R. 519.
- (ii.) **Ch. D.**—*Construction—Blank—Name of Annuitant.*—Testator gave legacies to A., B., C., D., and gave “to \_\_\_\_\_, daughter of \_\_\_\_\_, holding some situation about the church \_\_\_\_\_,” an annuity. And he directed that “in case any of my said legatees A., B., C., D., and E.” should become bankrupt, then over. *Held* that E. was entitled to the annuity on proof that she was the daughter of the beadle of the parish church at Epsom, and that the testator knew her.—*Furniss v. Phear*, 36 W.R. 521.
- (iii.) **Ch. D.**—*Construction—Legacy—Condition—Limitation.*—A testator bequeathed to his sister a weekly sum “during such time as she may live apart from her husband before my son attains the age of twenty-one, for her maintenance while so living apart from her husband.” *Held*, that the living of the legatee apart from her husband was a limitation, not a condition, and that the weekly sum was not payable while she lived with her husband.—*Re Moore*; *Trafford v. Maconochie*, 57 L.J. Ch. 320; 58 L.T. 70.
- (iv.) **C. A.**—*Construction—Gift Over—“Then.”*—Decision of Ch. D. (*see* Vol. 12, p. 122, vi.) affirmed.—*Grant v. Heysham*, 57 L.T. 828.
- (v.) **Ch. D.**—*Construction—Executory Devise—Validity.*—Devise and bequest upon trust for B. with direction that in the event of his doing or suffering anything whereby he should be deprived of the beneficial enjoyment of the property, the trust should determine, and the property go over. *Held*, that the executory devise and bequest was void, and B. absolutely entitled.—*Dugdale v. Dugdale*, 36 W.R. 462.
- (vi.) **Ch. D.**—*Construction—Bequest for Life with Special Power of Appointment—Revocation of Bequest—Effect of.*—Bequest of a share of residue on trust for A. for life, and after her decease for such of a class as she should appoint, with a gift in default of appointment. By codicil all bequests in favour of A. were revoked. *Held*, that the power of appointment was revoked, and the gift in default took effect.—*Currey v. Brough*, 36 W.R. 409.
- (vii.) **Ch. D.**—*Construction—Illegitimate Children—“Representatives.”*—Gift to the children of “my sister C., the wife of T. H.” C. was never the wife of T. H.; the testator knew all the circumstances, visited his sister, and recognised the children as his nephews and nieces. *Held*, that they were entitled. Gift to the children of C. living at her decease and the “representatives” of such of them as should have died in her lifetime, share and share alike, but so that the representatives of such of them so dying should only take the share to which the deceased child would have been entitled. *Held*, that “representatives” meant next-of-kin or descendants, and not executors or administrators.—*Eagleton v. Horner*, 57 L.J. Ch. 211; 58 L.T. 103; 36 W.R. 348.

- (i.) **Ch. D.**—*Construction—Gift of Real Estate—Leaseholds—Wills Act, s. 26.*—Gift of all real estate in Durham and Middlesex and elsewhere, and certain land at S. in Durham held on lease, and the residue of the personal estate, on trust as to the personal estate for conversion, and as to the said real and leasehold estates in Durham and Middlesex as therein mentioned. The testator had no freehold estate in Middlesex, and had in Durham both freehold and leasehold land in addition to the land at S. *Held*, that the leaseholds passed under the gift of real estate in Durham and Middlesex.—*Greenwell v. Davison; re Davison*, 59 L.T. 304.
- (ii.) **Ch. D.**—*Construction—Before Wills Act—“All My Interest”—Inheritance.*—A testator, who died before the Wills Act, gave “all the interest of my houses and cottages situated as follows.” He then proceeded to dispose of the property, which was copyhold, and, after giving life interests, concluded with a gift to J. *Held*, that the words “all my interest” were sufficient to carry the inheritance, and that J. took the fee simple.—*Re De la Hunt and Pennington's Contract*, 57 L.T. 874.
- (iii.) **C. A.**—*Construction—Property at a Bank.*—Decision of Ch. D. (see Vol. 13, p. 59, iii.) reversed. — *Desinge v. Beare; in re Prater*, L.R. 37 Ch. D. 481.
- (iv.) **Ch. D.**—*Construction—Tenant for Life—Non-residence—Forfeiture—Validity—Settled Land Act, 1882, s. 51.*—Testator gave his wife an annuity, and devised a house on trust to permit her to occupy the same till she should fail to comply with certain directions, one of which was that she should reside in the house and not absent herself for more than three months in any year, otherwise the annuity and her interest in the house were to cease. The widow absented herself for more than three months, and did not before the end of that time let or sell the house. *Held*, that the condition was valid except so far as it would prevent the tenant for life from letting or selling the property, and that as the condition was broken the forfeiture took effect.—*Kemp v. Haynes*, L.R. 37 Ch. D. 306; 58 L.T. 14; 36 W.R. 321.
- (v.) **Ch. D.**—*Conversion—Discretion to Postpone—Re-conversion—Solicitor to Treasury.*—Devise of real estate upon trust, either immediately or at any time after the death of the testator as to the trustees should seem most expedient, to sell, and to hold the proceeds in trust for A., B., C., and D. *Held*, an absolute conversion. Where the persons interested in the proceeds of conversion are tenants in common, there can be no re-conversion implied unless they have all been at one time capable of agreeing to a re-conversion. The Solicitor to the Treasury, as administrator to a person without next-of-kin, has the same right as any other administrator to insist on a sale of real property to which that person was entitled as personalty.—*Gilbert v. Aviolet; re Heathcote*, 58 L.T. 43.
- (vi.) **Ch. D.**—*Locke King's Act Amendment Act, 1877, s. 1—Bequest of Leasehold—Contract to Purchase Reversion.*—A testator bequeathed to his widow his leasehold house. He subsequently agreed to purchase the reversion, but died before completion. *Held*, that the widow was entitled to the house, subject to the liability to pay the purchase-money.—*Drake v. Kershaw*, 36 W.R. 413.
- (vii.) **P. D.**—*Administration with Will Annexed—Minors—Grant to Stranger.*—Administration with will annexed granted to a stranger in blood elected by the children of the testator, who were minors, as their testamentary guardian, without notice to the next-of-kin entitled to the

grant, on proof that one had renounced, and that the others were at a distance, or that their residence was not known.—*In the Goods of Webb*, L.R. 13 P.D. 71.

- (i.) **P. D.**—*Execution—Acknowledgment.*—Testatrix exhibited to one of the attesting witnesses a codicil, saying that she had something which required two witnesses. The witnesses were not aware of the nature of the paper. They did not recollect seeing the testatrix sign, but one of them was clear that her signature was there at the time they signed. *Held* that there was a sufficient acknowledgment by the testatrix of her signature.—*Daintree v. Pasulo*, L.R. 13 P.D. 67.
- (ii.) **P. D.**—*Probate—Executor According to the Tenor.*—Directions to a trustee to get in the testator's estate and distribute it in a certain manner after payment of funeral and other expenses; *held*, to constitute the trustee executor according to the tenor.—*In the Goods of Lush*, L.R. 13 P.D. 22; 57 L.J. P. 23.
- (iii.) **P. D.**—*Revocation — Duplicate — Presumption.*—Where a testator executes a will in duplicate, and retains possession of one only of the copies, which is not forthcoming at his decease, there is a presumption of law that the will was destroyed *animo revocandi*.—*Jones v. Harding*, 58 L.T. 60.

# Quarterly Digest

OF

ALL REPORTED CASES,

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## Acquiescence:—

- (i.) **P. C.**—*Illegality of Transaction—Absence of Knowledge.*—Acquiescence and ratification must be founded on a full knowledge of the facts, and must be in relation to a transaction which may in itself be valid and legal. Where the accounts of a bank in process of liquidation had been altered so as to represent the bank as debtor in respect of a sum which had been really borrowed by its manager for his own purposes: *held*, that the bank could not, on the ground of acquiescence and ratification by the liquidating authority, be made liable to pay a debt it never owed.—*La Banque Jacques Cartier v. La Banque d'Epargne de la Cité de Montréal*, L.R. 13 App. Cas. 111; 57 L.J. P.C. 43.

## Administration:—

- (ii.) **C. A.**—*Discretion of Court—Direction by Testator to Commence Action*—R.S.C., 1883, O. lv., r. 10.—Where a testator directs his executors to commence an administration action, the Court still has discretion to refuse an order. Where such a direction had been given, an order was made, on the application of one of the executors, more than a year after the testator's death, declaring that the estate ought to be administered, and directing an inquiry of what the estate then consisted. An application by the other executor to discharge the order was refused, and the limited form of order approved of.—*Jones v. Hawkins*, L.R. 38 Ch. D. 319.
- (iii.) **Ch. D.**—*Insolvent Estate—Landlord's Right to Distrain—Bankruptcy Act, 1883, ss. 42, 125.*—Part of a testator's estate, which was found to be insolvent, consisted of leaseholds. The lessor commenced an action for administration in the Chancery Division. *Held*, that the lessor was entitled to distrain for six years' rent.—*Fryman v. Fryman*, 36 W.R. 631.  
*See Principal and Surety, p. 132, ii.*

**Adulteration :—**

- (i.) **Q. B. D.**—*Scienter—Sale of Food and Drugs Act, 1875, s. 6.*—To constitute an offence against section 6, it is not necessary that the seller should know that the article sold was not of the nature, substance, and quality demanded.—*Betts v. Armstead*, L.R. 20 Q.B.D. 771; 58 L.T. 811; 36 W.R. 720.

**Bankruptcy :—**

- (ii.) **Q. B. D.**—*Application by Official Receiver as Trustee—Fees—Disclaimer—Joinder of Respondents.*—Where the official receiver makes an application to the Court as a trustee he must pay the usual fees. Different landlords of separate and distinct estates cannot be joined as respondents to one application for leave to disclaim the aggregate property.—*E. p. The Trustee; in re Whitaker*, 36 W.R. 736.
- (iii.) **Q. B. D.**—*Appointment of Trustee—Objection to—Bankruptcy Act, 1883, s. 21.*—The debtor executed a deed of assignment for the benefit of his creditors, under which a trustee was appointed, who dealt with the estate. The debtor was adjudicated a bankrupt, the act of bankruptcy being the execution of the deed. The creditors appointed the trustee of the deed trustee in the bankruptcy. The Board of Trade objected to the appointment, on the ground that the connection of the trustee with the bankrupt's estate made it "difficult for him to act with impartiality in the interests of the creditors generally." *Held*, that the objection must be sustained.—*E. p. Board of Trade; in re Martin*, L.R. 21 Q.B.D. 29; 57 L.J. Q.B. 384; 36 W.R. 698.
- (iv.) **C. A.**—*Bankruptcy Notice—"Final Judgment"—Stay of Execution—Garnishee Order against Judgment Debtor—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—Where a creditor has obtained final judgment, and a garnishee order absolute has been made against the judgment debtor as garnishee, execution on the judgment must be taken to be stayed so long as the garnishee order is undischarged, and the creditor cannot serve a bankruptcy notice on the garnishee in respect of the judgment debt, even though the debt in respect of which the garnishee order was made has been, in fact, paid.—*E. p. Hyde; in re Connan*, L.R. 20 Q.B.D. 690.
- (v.) **C. A.**—*Bankruptcy Notice—Foreclosure Decree—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—A creditor who, as equitable mortgagee, has obtained a foreclosure decree and an order for sale of property of the debtor, and cannot effect the sale, may serve a bankruptcy notice; and the fact of such order for sale not having been carried out is not a sufficient ground for an adjournment of further proceedings on the notice on the application of the debtor.—*E. p. Meston; in re Kelday*, 36 W.R. 585.
- (vi.) **C. A.**—*Composition—Subsequent Adjudication of Bankruptcy—Relation back of Trustee's Title—Bankruptcy Act, 1869, s. 126.*—Where creditors resolved to accept a composition, and the debtor is subsequently adjudicated a bankrupt, because the composition cannot be carried out, the title of the trustee does not relate back to the act of bankruptcy committed by filing the petition for liquidation, so as to avoid a payment made by the debtor between the filing of the petition and the adjudication.—*E. p. McDermott; in re McHenry*, 36 W.R. 725.
- (vii.) **C. A.**—*Composition Deed—Secret Bargain with Creditor.*—By a composition deed creditors agreed to release the debtor from all debts in consideration of payment of a composition, the deed to be void if default should be made in payment of the composition. One of the executing creditors made a secret bargain with the debtor by which he was to



receive an additional payment. *Held*, that the release of such creditor's debt was absolute, and the condition void.—*E. p. Phillips; in re Harvey*, 36 W.R. 567.

- (i.) **C. A.**—*Costs—Lien for—Money in Hands of Receiver—Claim for Rent—Preference.*—Decision of Q. B. D. (see Vol. 13, p. 63, i.) reversed.—*E. p. Brown; in re Suffield and Watts*, L.R. 20 Q.B.D. 693; 36 W.R. 584.
- (ii.) **Q. B. D.**—*Debtor's Petition—Statutable Misdemeanours—Power to Order Prosecution—Debtors Act, 1869, s. 11, sub-ss. 13, 14, 15—Bankruptcy Act, 1883, s. 149, sub-s. 2; s. 163, sub-s. 1.*—Where a bankrupt has presented his own petition, the Court has now no power to order the trustee to prosecute the bankrupt for any of the statutable misdemeanours created by the Debtors Act, 1869.—*E. p. Wood; in re Burden*, L.R. 21 Q.B.D. 24.
- (iii.) **Q. B. D.**—*Disclaimer by Trustee—Crown Property—Bankruptcy Act, 1883, ss. 55, 150.*—A trustee in bankruptcy may disclaim the bankrupt's interest in property held by him from the Crown.—*E. p. Commissioners of Woods and Forests; in re Thomas*, 36 W.R. 735.
- (iv.) **C. A.**—*Disqualifications of Bankrupt—Certificate to Remove—Bankruptcy Act, 1883, s. 32, sub-s. 2 (b).*—A bankrupt whose bankruptcy was caused by the costs of an unsuccessful suit for divorce commenced by himself, is not entitled to a certificate that "his bankruptcy was caused by misfortune, without any misconduct on his part."—*In re Lord Colin Campbell*, L.R. 20 Q.B.D. 816; 36 W.R. 582.
- (v.) **Q. B. D.**—*Husband and Wife—Joint Petition—Separate Receiving Orders—Bankruptcy Act, 1883, s. 8.*—Separate receiving orders were made against a husband and wife on a joint petition. It was found that the husband had no assets, and had only acted as manager of the wife's business. The official receiver applied that the order against the husband should be rescinded. *Held*, that the official receiver had *locus standi* to make the application, and that the order ought to be rescinded.—*E. p. Official Receiver; in re Bond*, L.R. 21 Q.B.D. 17; 36 W.R. 700.
- (vi.) **Q. B. D.**—*Judgment Summons—Alimony—Receiving Order in lieu of Committal—Payment by Instalments—Debtors Act, 1869, s. 5—Bankruptcy Act, 1883, s. 103, sub-s. (5).*—A sum of arrears being due under orders for alimony, a judgment summons was issued by the wife. *Held*, that a receiving order in lieu of committal could not be made, but an order was made directing payment by instalments under the Debtors Act.—*E. p. Otway; in re Otway*, 36 W.R. 698.
- (vii.) **Q. B. D.**—*Jurisdiction of County Court—Special Circumstances—Bankruptcy Act, 1883, s. 102.*—Where, in an attempt by the trustee in a bankruptcy to set aside certain transactions as void under the statute of Elizabeth, a large sum is involved, and questions of character may arise, the County Court judge ought not, in the absence of special circumstances, to exercise his jurisdiction.—*E. p. Hazlehurst; re Beswick*, 58 L.T. 591.
- (viii.) **C. A.**—*Married Woman—Marriage Settlement—Life Estate—Married Women's Property Act, 1882, s. 1, sub-s. 5; s. 19.*—A married woman who traded separately from her husband was adjudicated bankrupt in respect of her separate property. She had, under her marriage settlement, a life estate in property for her separate use, without any restraint on anticipation. *Held*, that her life estate vested in the trustee in bankruptcy.—*E. p. Boyd; in re Armstrong*, 36 W.R. 772.



- (i.) **C. A.**—*Post-Nuptial Settlement—Purchase for Value—Trader—Bankruptcy Act, 1869, ss. 91, 94, sub-s. 3.*—By a post-nuptial settlement the settlor, in consideration of an assignment by his father to the trustees of leaseholds, and of the release by his father of a debt due from him, assigned to the trustees two policies on his life. He became bankrupt within two years. *Held*, that his father was a purchaser for value, and that the settlement was valid. *Held*, also, that it was protected as a “dealing with the bankrupt in good faith and for valuable consideration.” A general medical practitioner who dispenses his own medicines, making no charge for them, is not a “trader.”—*Hance v. Harding*, L.R. 20 Q.B.D. 732; 57 L.J. Q.B. 403; 36 W.R. 629.

### Bill of Sale :—

- (ii.) **C. A. & Q. B. D.**—*Mortgage—Attornment—Bills of Sale Act, 1878, s. 6.*—A mortgage deed contained a clause whereby the mortgagor attorned tenant at a yearly rent by quarterly payments, the first payment to be made on the first day of the month after any interest should have become in arrear, all money received for rent due under the attornment to be accepted in the first place in or towards satisfaction of the interest then in arrear. *Held*, that the clause fell within section 6 of the Bills of Sale Act, 1878.—*E. p. Kennedy*; *in re Willis*, 36 W.R. 639 and 793.
- (iii.) **C. A.**—*Mortgage—Trade Machinery—Bills of Sale Act, 1878, ss. 3, 4, 5, 7.—Conveyancing Act, 1881, ss. 6 (2), 19.*—A mortgage of premises on which there is trade machinery, which is not separately assigned, does not, by incorporating the statutory power of sale, entitle the mortgagee to sever the trade machinery, or to sell it apart from the land, and therefore is not a bill of sale requiring registration.—*Batchelder v. Yates*, L.R. 38 Ch. D. 112; 36 W.R. 568.
- (iv.) **Q. B. D.**—*Registration—Validity—Misdescription of Name and Occupation of Grantor—Bills of Sale Act, 1878, s. 10, sub-s. 2.*—The grantor of a bill of sale was described in the bill of sale and in the affidavit filed on registration as “Kendrick Turner, tutor,” his true name and occupation being Frederick Henry Turner, schoolmaster. *Held*, that the registration was invalidated.—*Lee v. Turner*, L.R. 20 Q.B.D. 773.
- (v.) **Q. B. D.**—*Registration—Validity—Misdescription of Grantor's Name—Intent to Mislead—Bills of Sale Act, 1878, s. 10, sub-s. 2.*—In a bill of sale given by husband and wife, and in the affidavit filed on registration, the husband's christian name was given as Alfred, his true name being George Henry Arthur. The misdescription was made purposely to conceal the fact of the giving of the bill of sale. *Held*, that the registration was not invalidated.—*Downs v. Salmon*, L.R. 20 Q.B.D. 775; 36 W.R. 810.
- (vi.) **C. A.**—*Title by Oral Agreement—“Receipt”—Possession—Bills of Sale Act, 1878, s. 4—Bills of Sale Act, 1882.*—Where on an oral agreement by which title to a chattel was given as security for an advance, the borrower signed a “receipt” which was not intended to, and did not, express the contract between the parties; *held*, that such document, not being an assurance, was not a bill of sale, and that the lender being in possession of the chattel under the agreement, and being able to defend his possession without reference to such document, his title was not affected by the Bills of Sale Acts.—*Newlove v. Shrewsbury*, L.R. 21 Q.B.D. 41.
- (vii.) **Q. B. D.**—*Void Bill of Sale—Promissory Note as Security—Bills of Sale Act (1878) Amendment Act, 1882, s. 9.*—Where a bill of sale and a promissory note are given as part of the same transaction to secure

the same debt, and the stipulations of the promissory note render the bill of sale void, the note is nevertheless good.—*Monetary Advance Co. v. Cater*, L.R. 20 Q.B.D. 785.

**Building Society:—**

- (i.) **Q. B. D.**—*Advance to—Borrowing Power—Compromise—Estoppel.*—A. lent money to a building society which had no borrowing power. His representative demanded payment, but agreed to desist from proceedings on receipt of a loan certificate for the amount, the society having then obtained borrowing powers. *Held*, in the winding-up of the society, that the society was not estopped from disputing his claim to rank as a creditor; that there was no compromise, and that the transaction, being in effect an advance to pay off an invalid claim, was illegal.—*E. p. Watson; in re Sheffield Permanent Building Society*, 36 W.R. 829.

**Burial Board:—**

- (ii.) **C. A.**—“*Exclusive Right of Burial*” *Right of Board to Regulate—Object placed on Grave—Burial Acts, 15 & 16 Vict., c. 85, and 16 & 17 Vict., c. 134.*—Decision of Q. B. D. (see Vol. 13, p. 34, i.) affirmed.—*McGough v. Lancaster Burial Board*, 36 W.R. 822.

**Charity:—**

- (iii.) **Ch. D.**—*Objects of.*—The funds of a charity were applicable to “the reparations, ornaments, and other necessary occasions” of a parish church. A new parish church having been erected and substituted for the old one, the funds were found insufficient for the erection of a spire. *Held*, that the erection of a spire fell within the objects of the charity. *Held*, also, that the payment of salaries of persons employed in the church, except such as were concerned with the maintenance of the fabric, did not fall within the objects of the charity.—*In re Palatine Estate Charity*, 36 W.R. 732.

**Colonial Law:—**

- (iv.) **P. C.—Canada.**—*Railway—Seizure in Execution—46 Vict., c. 24.*—By Canadian law a statutory railway undertaking cannot be disintegrated by piecemeal sales at the instance of judgment creditors or incumbrancers; but a railway, or a section of a railway, may, as an integer, be taken in execution and sold for the debts of the company which owns it.—*Redfield v. Corporation of Wickham*, 58 L.T. 455.
- (v.) **P. C.—Cape of Good Hope.**—*Art. 6 of 1864, s. 9—Construction—Bank-notes in Circulation.*—Where a bank consists of a head office and several branches, some of which as well as the head office issue notes, the return of bank-notes in circulation or outstanding need not include notes, whether issued by the head office or a branch, which at the date of the return are in the possession of any office of the bank.—*Bank of Africa v. The Colonial Government*, L.R. 13 App. Cas. 215; 57 L.J. P.C. 66; 58 L.T. 427.
- (vi.) **P. C.—Ontario.**—*34 Vict., c. 48—37 Vict., c. 43—Incorporation of Railway Company—Municipal Bye-Law—Validity.*—*Held*, that the Grand Junction Railway Company of Canada was duly incorporated, and entitled to the benefit of a bye-law of the Corporation of Peterborough, providing a bonus for the railway, and that the said bye-law was legal, valid, and binding on the corporation, but that the company had not complied with the conditions entitling them to the bonus.—*The Grand Junction and Midland Railways of Canada v. The Corporation of Peterborough*, L.R. 13 App. Cas. 136.

- (i.) **P. C.—New South Wales.**—*Leasehold Area—Conditional Purchase—Forfeiture—Crown Lands Act, 1884, ss. 4, 21, sub-s. 3, 71, 74, 76.*—Where a conditional purchase of land, locally within the ambit of a leasehold area, is forfeited, the land does not revert to and become part of the leasehold, but becomes part of the “resumed area” of which a pastoral lease may not be granted. The “lands comprised within leasehold areas” which are exempt from conditional sale, are lands within and forming part of the area, of which, as such, a pastoral lease may be granted.—*Tearle v. Edols*, L.R. 13 App. Cas. 183; 57 L.J. P.C. 58; 58 L.T. 360.
- (ii.) **P. C.—Queensland.**—*Gold Fields Act, 1874, ss. 9, 11—Holders of Miner’s Rights—Rights of Crown Lessees.*—The holders of “miner’s rights” have no rights against lands leased by the Crown, and no title to try the validity of Crown leases, and cannot acquire such title by going to the lands leased and attempting to take possession of parcels of ground within them to work as claims.—*Osborne v. Morgan*, L.R. 13 App. Cas. 227; 57 L.J. P.C. 53; 58 L.T. 597; *Williams v. Morgan*, L.R. 13 App. Cas. 238; 58 L.T. 597.
- (iii.) **P. C.—Straits Settlements.**—*Action of Tort against Crown.*—The Crown Suits Ordinance, 1876, sec. 18, sub-sec. 2, includes actions of tort against the Crown.—*A. G. of the Straits Settlements v. Wemyss*, L.R. 13 App. Cas. 192; 57 L.J. P.C. 62; 58 L.T. 358.
- (iv.) **P. C.—Trinidad.**—*Bill of Sale—Working Agreement—Ordinance, No. 15, of 1884, section 10.*—The saving clause in section 10, “nothing contained in this Ordinance” is to be construed as if it were, “nothing contained in the two foregoing sections of this Ordinance.” A working agreement by which the owner of a sugar estate borrows money of a merchant on an agreement to deliver to him the sugar for sale on commission, the debt to be retained out of the proceeds, is not exempt from registration as a bill of sale as “a transfer of goods in the ordinary course of business.”—*Tennant v. Howatson*, 58 L.T. 646.

#### Common:—

- (v.) **C. A.—Inclosure—Trust for Occupiers—Rights of Lord—Rights of Owners—Charitable Trust.**—Inclosure Commissioners were directed by their Act to allot to the lord of the manor a turf common “in trust for the occupiers for the time being” of a certain class of cottages, in lieu of their rights or pretended rights of cutting turves. Part of the turf common so allotted was taken by a railway company. *Held*, (1) that the lord of the manor was entitled to so much of the purchase money as represented the value of the soil of the land; (2) that the trust was for the benefit of the occupiers for the time being of the cottages, and that the owners of the cottages had no title; (3) that the trust was charitable and not private. Decision of Ch. D. (see Vol. 12, p. 93, iii.) varied.—*In re the Christchurch Inclosure Act*, 57 L.J. Ch. 567.
- (vi.) **C. A.—Inclosure Act, 1845, s. 62—Power to Stop-up Highway.**—The power of the valuer acting in the matter of an inclosure to stop-up, divert, or alter roads, is not confined to roads passing through old inclosures from the waste or common, the subject of the inclosure, but extends to roads passing through any old inclosures within the parish.—*Hornby v. Silvester*, L.R. 20 Q.B.D. 797; 36 W.R. 679.

#### Company:—

- (vii.) **Ch. D.—Contributory—Application for Shares—Conditional.**—M., on applying for an appointment under a company, received a synopsis of the terms of the appointment and was informed that the selected

candidate would be required to take seven shares. He signed an application, in form unconditional for the shares and received an appointment on terms which differed from those in the synopsis. He then declined the appointment and repudiated the shares. *Held*, that his application was conditional, and that he could not be put on the list of contributories.—*Re London and Provincial Provident Association; Mogridge's Case*, 58 L.T. 801.

- (i.) **Ch. D.**—*Contract on behalf of Intended Company—Ratification—Adoption.*—An agreement was entered into between J. and W. on behalf of an intended company, whereby J. agreed to sell property to the company. The memorandum of the company stated that one of its objects was to carry the agreement into effect, and the articles provided that the directors should do so. At a meeting of directors it was resolved that the agreement should be adopted. It was also resolved to accept an offer of J. to receive payment in debentures. A deed of assignment of part of the property was sealed by the company, which recited that he had agreed to sell that part to the company. The debentures were issued to J. After a winding-up order, J. assigned to the liquidator the remainder of the property, the deed reciting the adoption by the company of the agreement. *Held*, that there was evidence of a contract that the agreement should be adopted, so that money was due to J. at the time of the issue of the debentures, and that the same were valid to the extent of the borrowing powers vested in the directors. — *Howard v. Patent Ivory Manufacturing Co.*, L.R. 38 Ch. D. 156; 58 L.T. 395; 36 W.R. 801.
- (ii.) **Q. B. D.**—*Directors—Number—Calls—Validity—Estoppel—Forfeiture—Interest on Calls.*—When the number of directors has fallen below that provided for by the articles, the remainder of the directors cannot make a call, or fill up the board so as to make a valid call; but a director who has assisted at making such call is estopped from denying its validity. Where the articles provide for forfeiture, payment of calls owing on shares at the time of forfeiture, and for payment of interest on calls in arrear, a call is "owing" as soon as made, and is payable though the shares are forfeited before the time appointed for payment; and interest is payable on calls from the day appointed for payment till the time of forfeiture, but not further.—*Faure Electric Accumulator Co. v. Phillipart*, 58 L.T. 525.
- (iii.) **C. A.**—*Director—Qualification Shares—Agreement to Take.*—Where the articles provided that a director might act before acquiring his qualification shares, but must vacate office if he did not acquire them within three months; *held*, that a director did not, merely by acting as a director, bind himself to take the qualification shares.—*E. p. Jobling; re Wheel Buller Consols*, L.R. 38 Ch. D. 42; 57 L.J. Ch. 333; 36 W.R. 723.
- (iv.) **Ch. D.**—*Payment of Dividend—Depreciation of Assets—Wasting Asset.*—Where the sole asset of a company consisted of a concession for years of the right of raising a mineral, the Court refused to interfere with the payment of a dividend on the ground of the asset being of a wasting nature, being satisfied on the evidence that the concession was not in fact less valuable than at the time of the formation of the Company.—*Lee v. Neuchatel Asphalte Co.*, 58 L.T. 555.
- (v.) **Ch. D.**—*Prospectus—Misrepresentation—Contract—Promotion Money.*—Before the issue of the prospectus, the defendant S., the vendor to the company, verbally agreed with the defendant E., that of £21,000 appearing as the cash portion of the purchase-money, E. should receive £6,000 as promoter. The agreement was not mentioned in the prospectus. The plaintiff T. stated that if he had known of the agreement

he would not have recommended the plaintiff C. to invest in the company. *Held*, that this was such a misrepresentation as entitled the plaintiffs to relief, and also, that the contract ought to be mentioned in the prospectus, and that its non-disclosure rendered the prospectus fraudulent.—*Copel & Co. v. Sim's Composition Co.*, 58 L.T. 807; 36 W.R. 689.

- (i.) **C. A. & Ch. D.**—*Sale of Undertaking — Surplus — Distribution — Preference Shareholders.*—The undertaking of a company having been sold for a sum which was more than sufficient, after the payment of its debts and liabilities, to repay the whole of its capital, *held*, that the surplus was not divisible as “profits” among the ordinary shareholders only, but that the ordinary and preference shareholders were, in the absence of any special contract, entitled to share in the surplus in proportion to the amounts paid up on their shares.—*Re the Bridgewater Navigation Co.*, 58 L.T. 476; 36 W.R. 769.
- (ii.) **C. A.**—*Issue of Shares at a Discount—Registered Contract—Ultra vires — Companies Act, 1862, ss. 7, 8, 12 — Companies Act, 1867, s. 25.*—The issue of shares at a discount is *ultra vires*; and where such an issue has been made, though a contract with the allottees of the shares has been registered, such allottees are entitled, the company being still solvent and a going concern, to have their names taken off the register.—*In re Almada & Tirito Co*; *Allen's Case*, 36 W.R. 593.
- (iii.) **C. A.**—*Shares—Payment otherwise than in Cash—Transferees—Estoppel Companies Act, 1867, s. 25.*—A company contracted with a foreign syndicate to issue to it, in consideration of services rendered, fully paid up shares, and to procure registration of the contract before issuing the shares. The shares were issued, the certificates stating them to be fully paid up, but the contract was not registered. Some of the shares were transferred without consideration to A. and B., directors of the company. A. and B. believed that the contract had been registered, but there was no representation by the company to that effect. A. and B. knew that the shares had not been paid for in cash. *Held*, that neither the company nor its liquidator were estopped from saying that the shares had not been paid for in cash, and that A. and B. must be put on the list of contributories.—*In re London Celluloid Co.*; *Bayley and Hanbury's Cases*, 36 W.R. 673.
- (iv.) **C. A.**—*Shares—Payment in Cash—Companies Act, 1867, s. 25.*—Decision of Ch. D. (see Vol. 13, p. 67, v.) affirmed.—*In re Land Development Association*; *Kent's Case*, 36 W.R. 819.
- (v.) **Ch. D.**—*Shares—Transfer—Inchoate Legal Title—Prior Equitable Title.*—W. was the registered holder of shares in a company as trustee for the plaintiff. The deed of settlement of the company provided that no person should be entitled to be treated as a shareholder until registered, that no person should be entitled to registration till he had by deed undertaken the liabilities of a shareholder, and that it should be essential to the validity of a transfer that the deed effecting it should be deposited or left at the office of the company. W. deposited the shares with a blank transfer with A. to secure his own debt. A. filled up the blanks and sent the transfer to the company for registration. *Held*, that A., not having been registered, had only an inchoate legal title, which could not defeat the prior equitable title of the plaintiff.—*Roots v. Williamson*, 58 L.T. 802; 36 W.R. 758.
- (vi.) **C. A.**—*Shares — Blank Transfer — Title to Certificate—Estoppel.*—Decision of Ch. D. (see Vol. 13, p. 5, vi.) reversed.—*Williams v. Colonial Bank*, 36 W.R. 625.

(i.) **C. A.**—*Transfer of Stock—Unregistered—Title of Transferee—Companies Clauses Act, 1845, ss. 14, 15, 16, 17.*—Decision of Ch. D. (see Vol. 12, p. 94, viii.) affirmed.—*Nanney v. Morgan*, 36 W.R. 677.

(ii.) **Ch. D.**—*Winding-up Petition—Dismissal—Costs.*—A creditor's winding-up petition having stood over by arrangement, was, at the petitioner's request dismissed with costs as against the company, the company having paid the petitioner's debt. Two creditors appeared separately in support, one of whom received part of his debt, and the other nothing. *Held*, that one set of costs should be given, which should be given to the creditor who had gained nothing by the proceedings.—*In re The Peckham Tramways Co.*, 57 L.J. Ch. 462.

### Compulsion:—

(iii.) **Q. B. D.**—*Over-payment—Action to Recover.*—The plaintiff paid, on the demand of the defendants, a sum for water rates, calculated on the "gross rental" of his house. The plaintiff, contending that the rate should be calculated on the net rental, brought an action to recover the excess. The defendants had no power to distrain for non-payment. They had power to stop the water-supply, which power they had not exercised or threatened to exercise. *Held*, that the payment was voluntary, and the excess could not be recovered.—*Slater v. Mayor of Burnley*, 36 W.R. 831.

### Contempt of Court:—

(iv.) **Ch. D.**—*Counsel—Untrue Affidavits.*—Where a counsel engaged in a case knew that affidavits were to be read which amounted, in his own words, to chicanery, *held*, that in not disclosing the facts to the Court, but in allowing them to be used, he was conspiring to deceive the Court, and was guilty of contempt. *Held*, that he must be committed, and pay the costs of the motion to commit. *Ordered*, that the documents be impounded.—*Linwood v. Andrews*, 58 L.T. 612.

*See County Court*, p. 110, ii.

### Contract:—

(v.) **C. A.**—*Agreement to Enter into Agreement—Damages.*—Decision of Ch. D. (see Vol. 13, p. 37, ii.) affirmed.—*Foster v. Wheeler*, L.R. 38 Ch. D. 130.

(vi.) **Ch. D.**—*Assignment of Patent—Lapse of—Implied Covenant—Damages.*—A patentee by deed assigned his patent in consideration of a sum of cash and a covenant to pay royalties. The assignee omitted to pay the stamp duties, and the patent therefore lapsed. *Held*, that a covenant to keep the patent on foot could not be implied, and that as the omission to pay the stamp duties was *bonâ fide*, the assignee was not liable in damages to the assignor.—*In re Railway and Electric Appliances Co.*, 36 W.R. 730.

(vii.) **Ch. D.**—*Statute of Frauds—Interest in Land—Part Performance—Damages.*—A contract for the sale of building materials to be taken down and removed by the purchaser is a contract for the sale of an interest in land. The equitable doctrine of part performance cannot be made use of for the purpose of obtaining damages on a contract the specific performance of which is no longer possible.—*Lavery v. Pursell*, 57 L.J. Ch. 570.



**Copyright :—**

- (i.) **Ch. D.**—*Infringement—Dramatizing Novel—Multiplying Copies—Copyright Act, 1842, ss. 2, 3.*—The dramatizing of a novel, and the representation of the play on the stage, are not infringements of the copyright, but the making of copies (though not in print) of a play in which numerous passages from the novel have been inserted, is “multiplying copies” of the novel, and is an infringement of the copyright.—*Warne v. Seebohm*, 36 W.R. 686.

**County Court :—**

- (ii.) **C. A. & Q. B. D.**—*Committal for Contempt—Power to Review—Form of Warrant—Form of Release—County Courts Act, 1856, s. 113—County Court Rules, 1886, Form 297.*—The Superior Court will not review the decisions of the County Court in matters of fine or imprisonment for contempt, unless there is no reasonable evidence of any contempt and the liberty of the subject requires protection. In cases of committal for imprisonment, either simply or in default of payment of a fine, the form of warrant No. 297 is the only one applicable, and the gaoler cannot discharge the prisoner on payment of the fine, but the fine must be paid into Court and application made to the judge to order the discharge.—*Reg. v. Jordan*, 36 W.R. 589 & 797.
- (iii.) **Q. B. D.**—*High Bailiff—Possession Money—Wrongful Execution—19 & 20 Vict., c. 108, s. 83, Sched. C—County Court Rules, 1886, O. xxvii., r. 1, Sched. B, parts 1 & 3.*—A high bailiff of a County Court sued an execution creditor for four days’ possession money on a wrongful execution levied on goods other than those of the judgment debtor. *Held*, that it is within the discretion of the County Court Judge to award the high bailiff such fee as is allowed by Schedule C of 19 & 20 Vict., c. 108, taken with Schedule B, parts 1 & 3, of the County Court Rules of 1886, subject to the limitations of O. xxvii., r. 1, of these rules, which rule is *intra vires*.—*Thomas v. Peek*, L.R. 20 Q.B.D. 727; 36 W.R. 606.
- (iv.) **Q. B. D.**—*Jurisdiction—New Trial—Prohibition.*—The High Court will not look into the grounds on which a County Court Judge has granted a new trial, except to see that they are such that he could have reasonably exercised discretion on them. Where a judge refused a new trial on two grounds urged for it, but intimated that a fresh application might be made on a third ground if supported by evidence: *held*, that he had not “finally determined” the application, and that a writ of prohibition could not issue to prevent the new trial, which was granted at the subsequent application.—*Reg. v. County Court Judge for Greenwich*, 36 W.R. 668.

*See Ship*, p. 134, v.

**Criminal Law :—**

- (v.) **C. C. R.**—*Criminal Law Amendment Act, 1885, ss. 4, 9—Evidence not given on Oath—Conviction for Common Assault.*—On the hearing of a charge under sec. 4, the evidence of a child was received, though not given on oath. *Held*, that the evidence would support a conviction under sec. 9.—*Reg. v. Wealand*, L.R. 20 Q.B.D. 827; 27 L.J. M.C. 44; 58 L.T. 782; 36 W.R. 576.
- (vi.) **C. C. R.**—*Criminal Law Amendment Act, 1885, s. 20—Evidence of Prisoner—Conviction for Common Assault.*—The evidence of the prisoner, received on a charge of indecent assault, is admissible to support a conviction for common assault on another count of the indictment.—*Reg. v. Owen*, L.R. 20 Q.B.D. 829; 57 L.J. M.C. 46; 58 L.T. 780; 36 W.R. 575.

- (i.) **C. C. R.**—*Evidence—Separate Counts—Embezzlement.*—Where a prisoner is charged on separate counts of one indictment, the jury may be directed that they may consider with respect to the second and third counts evidence given with respect to the first count. The prisoner, a booking clerk to a steamship, had passenger tickets given him tied up in bundles and purporting to be numbered consecutively, but which were not examined before issue; the prisoner only had access to them. Tickets were produced bearing numbers corresponding with the number of certain tickets issued to the prisoner, assuming one of the bundles to have been complete, and stamped and marked as if they had been issued to passengers by the prisoner, and used on the steamship. The prisoner had not accounted for the price of those tickets. *Held*, that there was evidence to go to the jury of embezzlement.—*Reg. v. Stephens*, 58 L.T. 776.

**Crown :—**

- (ii.) **Ch. D.**—*Prerogative—Crown Debt—Priority.*—Letter-receivers were allowed by the Postmaster-General to pay moneys received by them on account of the Post Office into their private banking accounts. A bank had notice that some of its customers were letter-receivers and drew cheques for Post Office purposes. *Held*, in the liquidation of the bank, that the Postmaster-General was entitled to be paid the balance due on letter-receivers' accounts in respect of Post Office moneys in priority to other debts.—*In re West London Commercial Bank*, L.R. 38 Ch. D. 364.

**Damages :—**

- (iii.) **Q. B. D.**—*Measure of—Principal and Agent—Warranty of Authority.*—The plaintiff obtained judgment by default for £1,000 in an action against a foreign company. The defendant, the agent for the company, by mistake represented to the plaintiff that he was authorized to offer £300 in settlement, which offer was accepted. The settlement having been repudiated by the company, the plaintiff brought an action against the defendant for breach of warranty of authority. *Held*, that the measure of damages was the loss by the plaintiff of the benefit which he would have derived from the contract which the defendant warranted should be made; and that as the judgment which the plaintiff had obtained was worthless, his loss was the sum of £300, together with the expenses of negotiating the contract.—*Meek v. Wenult*, L.R. 21 Q.B.D. 126.

See Contract, p. 109, v. Deceit, p. 111, iv.

**Deceit :—**

- (iv.) **C. A.**—*Prospectus—Misstatement—Measure of Damages.*—The prospectus of a tramway company stated that the company was authorized by its Act of Parliament to use steam; it was in fact only authorized to do so with the consent of the Board of Trade, which consent was never obtained. *Held*, that the directors were liable for the misstatement. The measure of damages is the difference between the real value of the shares and the price paid for them; and the real value may be ascertained by the light of subsequent events which shew that the company was originally worthless.—*Peek v. Derry*, L.R. 37 Ch. D. 541; 57 L.J. Ch. 347.

**Dissenters' Chapel :—**

- (v.) **Ch. D.**—*Trust Deed—"Protestant Dissenters of the Presbyterian or Independent Denominations"—Dissenters' Chapels Act, 1845, s. 2.*—A chapel was conveyed on trust to allow the premises to be used as "a



meeting-house for Protestant Dissenters of the Presbyterian or Independent denomination." *Held*, that the fact that for twenty-five years the chapel had been used according to Independent principles and usages, did not prevent its being used according to Presbyterian usages. *Held*, also that the deed contemplated the control by the congregation of the chapel affairs, and that it could not be handed over to the Presbyterian Church of England, whereby such control would be lost. — *A. G. v. Anderson*, 57 L.J. Ch. 543; 58 L.T. 726; 36 W.R. 714.

### Domicile:—

- (i.) **C. A.**—*Infant—Right to Choose—Scotch Law.*—The illegitimate son of a Portuguese woman was sent to Scotland when a child, and was educated there by his father's relations. At the age of eighteen he obtained an appointment in the English Customs, and resided in England for ten years, after which he returned to Scotland, became a lunatic and died. While residing in England he paid visits to Scotland, where he retained apartments, in which he kept property. *Held*, that his domicile was not Scotch. *Semble*, that it was English. *Quære*, whether the Scotch law, by which an infant of fourteen can choose his domicile, applies to an infant who has a foreign domicile of origin.—*Urquhart v. Butterfield*, 57 L.J. Ch. 521; 58 L.T. 750.

See Husband and Wife, p. 114, iv.

### Easement:—

- (ii.) **C. A.**—*Light—Implied Grant—Derogation from by Vendor.*—Decision of Ch. D. (see Vol. 13, p. 72, v.) affirmed.—*Birmingham, Dudley, and District Banking Co. v. Ross*, L.R. 38 Ch. D. 295.

### Ecclesiastical Law:—

- (iii.) **Q. B. D.**—*Convocation—Election of Proctor—Decision of President—Mandamus.*—The Archbishop of York, as President of the Convocation of his Province, having decided that a candidate elected to represent an archdeaconry in the Lower House was disqualified; *held*, that there was no jurisdiction to grant a mandamus to compel the Archbishop to admit the candidate.—*Reg. v. Archbishop of York*, L.R. 20 Q.B.D. 740; 57 L.J. Q.B. 396; 36 W.R. 718.

**Escrow.**—See Power, p. 126, vi.

### Estoppel:—

- (iv.) **Ch. D.**—*Dismissal for Want of Prosecution—Consent Order—Subsequent Action.*—A consent order dismissing an action for want of prosecution, unless on a compromise of the cause of action, is no bar to another action between the same parties for the same matter.—*Magnus v. National Bank of Scotland*, 58 L.T. 617; 36 W.R. 602.

See Negligence, p. 123, iv. Building Society, p. 105, i.

**Evidence.**—See Criminal Law, p. 110, v., vi.; p. 111, i.

### Highways:—

- (v.) **C. A.**—*Dedication—Canal Company—Tow-path.*—A canal company has power to dedicate to the public land which has been acquired under statutory powers for a tow-path, provided the user by the public would not be incompatible with the purposes for which the land was acquired.—*Grand Junction Canal Co. v. Petty*, 36 W.R. 795.

- (i.) **Ch. D.**—*Highway Act, 1835, s. 67—Highway Act, 1862, s. 43—Turnpike Act, 1823, s. 67—“Drain”—Dumbwell—Presumption of Legal Origin for Existing State of Things.*—A dumbwell sunk into a porous stratum, into which the surface water from the highway is conducted by pipes, and from which it percolates into the subsoil, is a “drain;” and a highway authority having the powers of the Highway Act of 1835 may construct such a dumbwell in private land near to the highway, and may clean it out when necessary. In the absence of evidence as to the origin of an existing state of things, an illegal origin is not to be presumed, if it might naturally have had a legal origin.—*Croft v. Rickmansworth Highway Board*, 57 L.J. Ch. 589.
- (ii.) **C. A.**—*Main Road—Maintenance—County Authority—Highways and Locomotives (Amendment) Act, 1878, s. 13.*—A highway authority cannot recover from the county authority half of the expense of paving a macadamised road, as expenses of “maintenance.”—*Leek Improvement Commissioners v. Stafford Justices*, L.R. 20 Q.B.D. 794; 36 W.R. 354.
- (iii.) **Q. B. D.**—*Non-repair—Indictment—Urban Sanitary Authority—Highways and Locomotives (Amendment) Act, 1878, s. 10.*—An indictment will lie against an urban sanitary authority, acting as the highway authority for the district, for non-repair of a highway.—*Rdg. v. Mayor, &c., of Wakefield*, L.R. 20 Q.B.D. 810; 57 L.J. M.C. 52.
- (iv.) **Q. B. D.**—*Obstruction—Highway Act, 1835, s. 72—Metropolitan Area—Power of Police.*—The police can prosecute for obstructing a highway within the metropolitan area.—*Back v. Holmes*, 57 L.J. M.C. 37.

### Husband and Wife:—

- (v.) **Q. B. D.**—*Action by Widow—Lord Campbell’s Act, 1848, s. 2—Wife Living Apart.*—A woman, who at the time of her husband’s death, is living apart from him in adultery, is not entitled to bring an action for compensation for his death. *Quære*, whether evidence of the husband’s willingness to take her back would entitle her to maintain the action.—*Stimpson v. Wood*, 36 W.R. 734.
- (vi.) **C. A.**—*Chose in Action of Wife—Joint-Tenancy—Severance.*—Marriage does not operate as a severance of the wife’s joint-tenancy in a chose in action which has not been reduced into possession by the husband.—*Hughes v. Anderson*, L.R. 38 Ch. D. 286; 36 W.R. 817.
- (vii.) **P. D.**—*Divorce—Desertion—Husband Sentenced to Penal Servitude.*—A husband left his wife saying he was going for a week’s shooting. He really went to Australia to escape arrest for embezzlement. He had arranged to take a woman with him, and was found living in adultery with another woman. He was arrested in Australia, brought home and sentenced to penal servitude. *Held*, that the circumstances under which he went away constituted desertion, and that the desertion continued although he was prevented by imprisonment from returning to his wife.—*Drew v. Drew*, L.R. 13 P.D. 97.
- (viii.) **P. D.**—*Divorce—Desertion—Decree for Restitution of Conjugal Rights—Non-compliance—Matrimonial Causes Act, 1884, s. 5.*—Non-compliance with a decree for restitution of conjugal rights is equivalent to desertion for two years, and, for the purpose of subsequent proceedings for divorce, it may be coupled with adultery which may have taken place either before or after the decree.—*Bigwood v. Bigwood*, L.R. 13 P.D. 89; 58 I.T. 642.

- (i.) **P. D.**—*Divorce—Desertion—Separation.*—A husband and wife agreed to live separate owing to the husband's inability to maintain the wife. They corresponded for some time, and the wife offered to return but was refused. After the correspondence ceased it appeared that the husband had during the correspondence been living with another woman. *Held*, that the wife was entitled to a divorce for adultery and desertion.—*Smith v. Smith*, 58 L.T. 639.
- (ii.) **P. D.**—*Divorce—Variation of Settlement—Wife's Power of Appointment and Power of Appointing New Trustees*—22 & 23 Vict., c. 61, s. 5.—On a petition for variation of settlements after a decree of dissolution on the ground of the wife's adultery, the petitioner consenting that the wife should continue to receive part of the income settled on her, *held*, that she should not be deprived of the power of appointing or joining in the appointment of new trustees. An order extinguishing the power of appointment of funds in the settlement is within the power of the Court.—*Bosville v. Bosville*, L.R. 13 P.D. 76; 58 L.T. 640.
- (iii.) **Ch. D.**—*Gift to Husband and Wife and Third Person—Married Women's Act, 1882, ss. 1, 5.*—By a will made after the Married Women's Property Act, 1882, a gift was made to a husband and wife, and a third person, in equal parts. *Held*, that the husband and wife each took one-fourth, the wife's share being her separate property.—*Jupp v. Buckwell*, 36 W.R. 712.
- (iv.) **H. L.**—*Marriage Contract by Infant—Voidable—Law of Domicile—Judicial Notice.*—A female infant domiciled in Ireland, on her marriage with a domiciled Scotchman, executed in Ireland a contract, whereby she relinquished certain of the rights of a Scotch widow. *Held*, that her capacity to bind herself must be determined by Irish law, that she could not bind herself by any obligation not shown to be for her benefit, and that the House of Lords could take judicial notice of the Irish law.—*Cooper v. Cooper*, L.R. 13 App. Cas. 88.

*See Infant*, p. 115, iv.

### Improvement Charges:—

- (v.) **Ch. D.**—*Priorities.*—Two land improvement companies were incorporated by private Acts of 1849 and 1853 respectively. Both Acts provided that charges for improvements made thereunder should take priority over every other existing or future charge. The company of 1853 having executed improvements on land already subject to a charge in favour of the other company; *held*, that the provision in the Act of 1849 was not repealed by the later Act, and that the charges took effect in order of date.—*Pollock v. The Lands Improvement Co.*, L.R. 37 Ch.D. 661; 58 L.T. 374; 36 W.R. 617.

### Income Tax:—

- (vi.) **C. A.**—*Business Carried on Abroad—Partner Residing in England—Profits not Remitted to England—Income Tax Acts, 1842, ss. 100, 106, 108; 1853, s. 2, Sched. D.*—Decision of Q. B. D. (*see Vol. 13*, p. 10, ix.) reversed.—*Colquhoun v. Brooks*, L.R. 21 Q.B.D. 52; 36 W.R. 657.
- (vii.) **C. A.**—*Claim for Repayment—Discovery and Proof of Over-Assessment—"Within or at the end of the Year"*—5 & 6 Vict., c. 35, s. 133.—Over-assessment of income-tax must be found and proved as soon after the end of the year for which it is assessed as the applicant can ascertain it by using all reasonable and proper exertions. When the general commissioners have granted a certificate for the repayment of income-tax, the certificate is binding on the special commissioners, or at least the onus lies on the Crown to prove that the application was not made in reasonable time. (*See Vol. 13*, p. 76, iv.)—*Reg. v. Special Commissioners for Income Tax*, 36 W.R. 776.

- (i.) **C. A.**—*Foreign Firm—Trade Exercised within the United Kingdom—*5 & 6 Vict., c. 35, ss. 41, 44—16 & 17 Vict., c. 34, s. 2, Sched.D.—X., a wine merchant resident in France, employed an agent in London to sell his wines. The agent's office was taken on his own account. X.'s name appeared in the London Directory. Orders were forwarded by the agent to X., who sent the wine direct to the purchasers. Payments were made either to the agent or to X. X. kept no wine in England, and had no banking account there. *Held*, that there was a trade exercised by X. in the United Kingdom, the profits of which were assessable to income tax.—*Werle v. Colquhoun*, L.R. 20 Q.B.D. 753; 57 L.J. Q.B. 323; 58 L.T. 756; 36 W.R. 613.

**Infant :—**

- (ii.) **Ch. D.**—*Accumulation of Dividends on Consols—Infants and Lunatics Act, 1830, s. 32.*—A sum of Consols was standing in the sole name of an infant, and the Bank of England refused to act on a suggested order requiring them to accumulate the dividends. *Ordered*, that the dividends be paid to the trustees of a will under which the property was derived, to be applied for the benefit of the infant.—*In re Alice Kemp*, 36 W.R. 729.
- (iii.) **Q. B.**—*Age of Nurture—Removal from Mother—Lunatic.*—The Court will in its discretion, and under exceptional circumstances, such as the dangerous lunacy and improbable recovery of the mother, order the removal from her care of a child within the age of nurture.—*Reg. v. Barnet Guardians*, 57 L.J. M.C. 39.
- (iv.) **P. D.**—*Divorce—Order depriving Parent of Custody—Guardianship of Infants Act, 1886, s. 7.*—In a suit for divorce by a wife on the ground of adultery and great cruelty, the Court, after decree *nisi*, made an order declaring the respondent, who did not appear to oppose the application, to be an unfit person to have the custody of the children.—*Skinner v. Skinner*, L.R. 13 P.D. 90.
- (v.) **H. L.**—*Married Woman—Ward of Court—Reversionary Interest—Validity of Settlement.*—Decision of C. A. (see Vol. 12, p. 64, vi.) affirmed.—*Seaton v. Seaton*, L.R. 13 App. Cas. 61; 58 L.T. 565.
- (vi.) **C. A. & Q. B. D.**—*Infants' Relief Act, 1874, s. 2—Ratification—New Promise—Breach of Promise to Marry.*—The defendant, as an infant, promised to marry the plaintiff. After he came of age the plaintiff offered to release him. The defendant refused to be released, and said he would marry the plaintiff then, if she thought they were old enough. The plaintiff said they had better wait till they were older. *Held*, that there was evidence for the jury of a "new promise."—*Holmes v. Brierley*, 36 W.R. 693 & 795.

See Naturalisation, p. 123, i.

**Injunction :—**

- (vii.) **Ch. D.**—*Restraint of Action at Law.*—Underwriters of a policy of marine insurance sued to restrain policy holders from taking any proceedings with reference to the policy, on the ground that they had an admittedly good defence to any such proceedings. *Held*, that no injunction could be granted.—*Brooking v. Mandelay*, 36 W.R. 664.

**Innkeeper :—**

- (viii.) **Q. B. D.**—*Suffering Gaming—Connivance—Licensing Act, 1872, s. 17.*—An innkeeper posted up a notice against gaming in a skittle-alley on his premises, and directed the man in charge of the alley not

to allow gaming. Men having been found playing cards in the alley with the knowledge of the man in charge; *held*, that the innkeeper was rightly convicted of "suffering gaming" on the premises.—*Bond v. Evans*, 36 W.R. 767.

### **Intoxicating Liquor :—**

- (i.) **Q. B. D.**—*Sale to Drunken Person—Licensing Act, 1872, ss. 13, 62.*—A publican is rightly convicted of selling liquor to a drunken person, when the liquor is consumed by the drunken person, though ordered and paid for by a sober companion.—*Scatchard v. Johnson*, 57 L.J. M.C. 41.

### **Judgment Debt :—**

- (ii.) **C. A.**—*Interest—Insolvent Debtor—Surplus after Payment of Principal of all Debts—1 & 2 Vict., c. 110, ss. 17, 92.*—Interest at the rate of four per cent. is an incident necessarily attached to every judgment debt, and recoverable at law as a debt. Therefore, where in the case of a deceased debtor who became insolvent before 1869, a sum of money subsequently came into the hands of the assignee, out of which the principal of all the debts entered in the debtor's schedule was paid, *held*, that the debts were not satisfied so as to leave a surplus for the debtor's representatives till interest had also been paid.—*E. p. Lewis ; in re Clagett*, 36 W.R. 653.

### **Justice of the Peace :—**

- (iii.) **Q. B. D.**—*Disqualification—Bias.*—A justice of the peace, an *ex officio* member of a board of guardians, who had not sat on the assessment committee, took an active part with reference to the defence of an appeal from the decision of the assessment committee, and voted that the costs of defending the appeal should be defrayed by the board. *Held*, that he ought not to sit on the hearing of the appeal by quarter sessions.—*Reg. v. Cumberland Justices*, 58 L.T. 491.
- (iv.) **Q. B. D.**—*Money charged to have been fraudulently obtained—Order for Delivery of—2 & 3 Vict., c. 71, s. 29.*—Where a prisoner was charged at a police court with "fraudulently obtaining the sum of 5s. from Miss M., and also the sum of 5s. from Miss B.," and was convicted on the two offences, three other ladies having been called at the hearing, who proved that the prisoner had obtained small sums from them on fraudulent representations, *held*, that a large sum of money found on the prisoner was not money "charged" to be stolen or fraudulently obtained, and that the magistrate had, after the conviction, no jurisdiction to make an order for its delivery to the prisoner by the constable in whose custody it had remained.—*Reg. v. D'Eyncourt and Ryan*, L.R. 21 Q.B.D. 109.

### **Landlord and Tenant :—**

- (v.) **C. A.**—*Agreement for Lease—Forfeiture—Notice—Conveyancing Act, 1881, s. 14.*—Judgment of **Q. B. D.** (see Vol. 13, p. 77, ii.) affirmed.—*Swain v. Ayres*, 36 W.R. 798.
- (vi.) **Q. B. D.**—*Assignment—Surrender of Part of Premises—Liability of Lessee on Covenant to pay Rent.*—After the surrender by an assignee of a lease to the lessor of a small part of the demised premises, in consideration partly of an improvement of the remainder of the premises, which were not lessened in value, or substantially altered, by the surrender, the original lessee still remains liable on his covenant to pay the rent.—*Baynton v. Morgan*, L.R. 21 Q.B.D. 101.

- (i.) **H. L.—Lease—Covenant—Joint or Joint and Several.**—In a lease of land to A. and B., their executors, administrators, and assigns, as tenants in common, the lessees covenanted that they or, some or one of them, their executors, administrators, or assigns would pay the rent reserved. *Held*, that the covenant was joint, and not joint and several.—*White v. Tyndall*, 58 L.T. 741.
- (ii.) **Q. B. D.—Protection from Distress—Exclusive Right of Grazing—**46 & 47 Vict., c. 61, s. 45.—Cattle placed in a field under an agreement between their owner and the tenant for the exclusive right of grazing the field, are not exempt from distress.—*Masters v. Green*, L.R. 20 Q.B.D. 807; 36 W.R. 591.
- (iii.) **Ch. D.—Restrictive Covenant—"Business"—Nuisance—Hospital.**—A lessee covenanted not to carry on upon the demised premises certain specified trades or "any other noisome, obnoxious, or offensive trade or business, nor suffer any act or thing which shall or may be or grow to the annoyance, nuisance, grievance, or damage of the lessor or the inhabitants of the neighbouring or adjacent houses." *Held*, that the use of the premises as a hospital for treating diseases of the nose, ear, skin and eye, fistula, and other diseases, was a breach of the covenant.—*Tod-Heatly v. Benham*, 36 W.R. 688.

See Administration, p. 101, iii.

#### **Lands Clauses Act :—**

- (iv.) **C. A.—Premises Injuriouslly Affected—Change of Premises—Compensation.**—Decision of Q. B. D. (see Vol. 13, p. 11, v.) reversed.—*Reg. v. Poulter*, 58 L.T. 534.

#### **Lease :—**

- (v.) **P. C.—Covenant for Renewal—Riparian Owner—Sea-shore.**—The fact that a later lease does not embrace the whole property comprised in an earlier one is no reason for holding that it is not a fulfilment of a covenant for renewal contained in such earlier lease. Where the lessor has agreed with the Government to purchase land to be reclaimed from the sea adjacent to the land the subject of the lease, the lessee's rights under a covenant for renewal are not thereby affected, and he may, after the grant of a new lease, recover from the Government for injury done by the reclamation. There is no distinction between a tidal river and the sea as regards the rights of riparian owners.—*A.-G. for Straits Settlements v. Wemyss*, L.R. 13 App. Cas. 192; 57 L.J. P.C. 62; 58 L.T. 358.

#### **Libel :—**

- (vi.) **Q. B. D.—Publication—Communication to Wife—Indorsement on Servant's Written Character—Defacing Document—Questions for Jury—Damages.**—The plaintiff on entering the defendant's service handed him a written character from a former master. On the plaintiff being dismissed from the defendant's service the character was returned by the defendant's wife, bearing an indorsement purporting to give the reason of the plaintiff's dismissal. *Held*, that there was no evidence of publication of a libel, as the defendant and his wife were one at law for this purpose. *Held*, on a claim for defacing the character, that it was for the jury to say whether the property in the document remained in the plaintiff, and whether the defendant had acted maliciously, and that evidence of special damage would be admissible.—*Wennhak v. Morgan*, L.R. 20 Q.B.D. 685; 57 L.J. Q.B. 241; 36 W.R. 697.



- (i.) **Ch. D.**—*Trade Circular—Statement in Circular as to Infringement—Reasonable Cause.*—The defendants issued a circular stating that they could not supply a certain article (for which the plaintiff had obtained provisional protection) as it had “been proved to be an infringement” of another patented article. At that time no proceeding had been taken by anyone against the plaintiff. Afterwards an action was commenced against him, and then abandoned. *Held*, that there was no reasonable and probable cause for the statement in the circular, and that the plaintiff was entitled to damages.—*Crampton v. Swete*, 58 L.T. 516.

### Licensing:—

- (ii.) **C. A. & Q. B. D.**—*Licensing Act, 1872, s. 39—Six-day License—Renewal—Application for Seven-day License.*—The holder of a six-day license cannot, on an application for a renewal, apply for its renewal as a seven-day license.—*Reg. v. Crewkerne Justices*, L.R. 21 Q.B.D. 85; 58 L.T. 450; 36 W.R. 629.
- (iii.) **Q. B. D.**—*Renewal—Objection by Justices—Notice—Evidence—Licensing Act, 1872, s. 42, sub-ss. 2, 3.*—The justices may not refuse to renew a license on account of an objection raised by themselves, unless they have first given notice, and taken evidence.—*Gascoyne v. Risley*, 36 W.R. 605.
- (iv.) **Q. B. D.**—*Renewal—Discretion of Justices—9 Geo. IV., c. 61, s. 1—Licensing Act, 1872, s. 42; Licensing Act, 1874, s. 32.*—On an application for the renewal of a license, the justices are entitled to enquire into the character and wants of the neighbourhood, and in the exercise of their judicial discretion to refuse a renewal after such enquiry.—*Reg. v. Westmoreland Justices*, L.R. 21 Q.B.D. 66; 58 L.T. 494; 36 W.R. 634.
- (v.) **Q. B. D.**—*Place of Public Entertainment—Excise License—Licensing Act, 1872, ss. 3, 72, 74.*—The proprietor of a place of public entertainment is not entitled to an excise license unless he has previously obtained a justice’s license for the sale of intoxicating liquors.—*Reg. v. Commissioners of Inland Revenue*, 36 W.R. 696.

### Limitations:—

- (vi.) **Ch. D.**—*Simple Contract Debt of Testator—Interest Paid by Tenant for Life—3 Jac. I., c. 16—3 & 4 Will. IV., c. 104—9 Geo. IV., c. 14—19 & 20 Vict., c. 97, s. 14.*—Where the devisee for life, being one of the executors, paid during her life interest on a simple contract debt of the testator, *held*, that there was a sufficient acknowledgment of the liability of the real estate, and that the creditor was entitled, as against the remainderman, to payment out of the real estate, his action being commenced within six years from the last payment of interest.—*Hollingshead v. Webster*, L.R. 37 Ch. D. 651; 57 L.J. Ch. 400; 58 L.T. 758; 36 W.R. 660.
- (vii.) **Ch. D.**—*Statute of Limitations, s. 3—Real Property Limitation Act, 1874, s. 8—Acknowledgment of Liability to Account—Agreement for Mortgage—Right to Personal Covenant in Mortgage for Payment.*—Eleven years after a deposit of title deeds and an agreement to execute a mortgage, no interest having been paid nor anything done under the agreement, the borrower on being asked to make out an account stated his inability to do so, and expressed his willingness to leave the matter in the lender’s hands, he also said he had no funds to meet any claims on him. *Held*, that the letters amounted to an admission of his liability to account, and of his liability to the lender, and that they did not

prevent the acknowledgment from carrying with it a promise to pay, and, therefore, that the lender was entitled to a legal mortgage with a personal covenant for payment of principal and interest.—*Firth v. Slingsby*, 58 L.T. 481.

See Mortgage, p. 122, i. Railway, p. 132, vi.

### Local Government :—

- (i.) **C. A.**—*Officer of Local Authority—Interest in Contracts—Fee or Reward in Addition to Salary—Public Health Act, 1875, ss. 150, 189, 193, 326.*—Decision of Q.B.D. (see Vol. 13, p. 78, ii.) affirmed.—*Whiteley v. Barley*, L.R. 21 Q.B.D. 154; 36 W.R. 823.
- (ii.) **Q. B. D.**—*“Street”—Paving by Frontagers—Public Health Act, 1875, ss. 4, 150.*—The owners of land adjoining a highway repairable by the inhabitants at large erected houses on their land, and threw open to the highway a strip of land in front of them. *Held*, that the houses and the strip of land formed a “street,” which the Urban Sanitary Authority could compel the frontagers to pave, channel, and kerb.—*Richards v. Kessick*, 57 L.J. M.C. 48.
- (iii.) **Q. B. D.**—*Urban Sanitary Authority—Bye-Law—Validity—Prohibition of Use of Building Unfit for Human Habitation—Public Health Act, 1875, ss. 23, 25, 157, 182, 183.*—An Urban Sanitary Authority made a bye-law that “no new house shall be occupied until the house drainage has been made and completed, nor until such house has been certified by the local board, or their officer authorised to give such certificate, after examination, to be in every respect fit for human habitation in their or his opinion.” *Held*, to be reasonable, and not inconsistent with any of the provisions of the Public Health Act, 1875, and therefore valid.—*Horsell v. The Swindon New Town Local Board*, 50 L.T. 732.

### Lunacy :—

- (iv.) **C. A.**—*Death of One of Two Joint Committees—Fund to Credit of Lunacy and Lands Clauses Act—Payment of Dividends to New Committee—Petition—Costs.*—At the death of one of two joint committees the dividends on a fund representing lands of the lunatic taken by the Board of Works were payable to the joint committees. The survivor was appointed sole committee, and on a petition by him the Court ordered the past and future dividends to be carried to the credit of the lunacy, and then to be paid to the petitioner, and intimated that any order appointing a new committee might direct payment to him, and that the Board need not be served on future applications, and ordered the Board to pay the costs of the present petition.—*In re Ryder*, L.R. 37 Ch. D. 595; 57 L.J. Ch. 459; 58 L.T. 783.
- (v.) **C. A.**—*New Trustee—Bodily Infirmary—Jurisdiction in Lunacy.*—The Lords Justices have only a Chancery jurisdiction in aid of their lunacy jurisdiction; therefore where an application was made to appoint a new trustee in the place of one who on the evidence was held to be incapacitated by infirmity of body and not of mind, it was *held*, that the application ought to be made to the Chancery Division.—*Re Barber*, 58 L.T. 756.
- (vi.) **C. A.**—*Order for Sale—Vendor Lunatic—Person Appointed to Convey—Trustee Act, 1850, ss. 3, 20—Trustee Extension Act, 1852, s. 1.*—Where property has been ordered by the Court to be sold, and one of the beneficial owners is a lunatic, of whose property no committee has been appointed, the lunatic ought to be declared to be a trustee of his share, and a person appointed to convey it.—*Re Watson*, 58 L.T. 509.



- (i.) **C. A.**—*Supposed Lunatic—Receiver Pending Inquisition—Ex parte.*—In a proper case the Court will, pending an application for an inquisition, appoint an interim receiver of the estate of the supposed lunatic, and in an urgent case will do so on an *ex parte* application.—*In re Pountain*, L.R. 37 Ch. D. 609; 57 L.J. Ch. 465.

### **Mandamus :—**

- (ii.) **Q. B. D.**—*Alternative Remedy.*—The registrar of joint stock companies refused to file a contract on the ground that it was insufficiently stamped. *Held*, that a mandamus ought not to be issued, on the ground that the appropriate remedy for the person aggrieved was to proceed under the Stamp Act, 1870, ss. 18 & 19.—*Reg. v. Registrar of Joint Stock Companies*, L.R. 21 Q.B.D. 131; 36 W.R. 695.

### **Married Woman :—**

- (iii.) **Ch. D.**—*Absolute Gift—Separate Use—After-Acquired Property.*—By the marriage settlement of N. S. and M. S. a fund, the property of M. S., was settled on trusts which gave N. S. the first life interest, and there was a covenant to settle any after-acquired property. The parents of M. S. appointed a fund to M. S. during her coverture, for her sole and separate use, without power of anticipation, her receipt to be a sufficient discharge, and there was a gift over on the death of M. S. without children. M. S. died leaving issue and having bequeathed all her property to N. S. *Held*, that the appointment shewed an intention to exclude N. S., that the separate use should apply only to the particular coverture, and that M. S. should have no power of disposition over the corpus. *Held*, also, that such a limitation was good, and that the corpus of the appointed fund, having accrued during the coverture, was caught by the after-acquired property clause.—*Shute v. Hogge*, 58 L.T. 546.
- (iv.) **Ch. D.**—*Exercise of Power of Appointment—Liability for Debts.*—In cases not falling within the Married Women's Property Act, 1882, the exercise by a married woman of a general power of appointment does not make the property appointed liable to engagements entered into by her on the credit of her separate estate.—*Roper v. Doncaster*, 36 W.R. 750.
- (v.) **Ch. D.**—*Restraint on Anticipation—Power of Attorney.*—A married woman restrained from anticipation may appoint an attorney to receive the growing payments, but only on her behalf and for her use.—*Stewart v. Fletcher*, 36 W.R. 713.
- (vi.) **Q. B. D.**—*Separate Estate—Judgment Against—Evidence—R.S.C.*, 1883, O. xiv.—*Married Women's Property Act*, 1882, ss. 14, 15, 19.—In an application to sign final judgment against a wife's separate estate for debts contracted before marriage, it is not necessary to prove that she is at the time possessed of separate estate, but the judgment must be in the form settled in *Scott v. Morley* (see Vol. 13, p. 45, ii.).—*Downe v. Fletcher*, L.R. 21 Q.B.D. 11; 36 W.R. 694.
- (vii.) **C. A.**—*Separate Estate—Sequestration—Discovery in Aid of Execution—Jurisdiction of Judge of Divorce Division—Divorce Act*, 1857, ss. 35, 52—*R.S.C.*, 1883, O. xlii., r. 33; O. xliii., r. 6; O. lxviii., r. 1.—A writ of sequestration is properly issued by the Divorce Division against the estate and effects of a married woman, without limiting the writ to property which she is not restrained from anticipating; but the writ can only operate on property which she is not restrained from anticipating. Where an order was made on the wife to deliver up the children of the marriage, of which order she evaded service; *held*, that a judge of the Divorce Division had no jurisdiction to summon her relatives before the Court to be examined as to their knowledge of the whereabouts of the wife and children.—*Hyde v. Hyde*, 36 W.R. 708.

- (i.) **C. A.**—*Separate Estate—Prior Covenant to Settle—Married Women's Property Act, 1882, ss. 5, 19.*—Decision of Ch. D. (see Vol. 13, p. 45, i.) affirmed.—*Hancock v. Hancock*, L.R. 38 Ch. D. 78; 57 L.J. Ch. 396. See Bankruptcy, p. 103, viii. Solicitor, p. 137, i. Will, p. 143, ii.

**Master and Servant:—**

- (ii.) **Q. B. D.**—*Employers' Liability Act, 1880, s. 7—Notice of Action—Service of Notice.*—A notice of action omitted the address of the person injured, and also the cause of injury, and gave the date of the accident wrongly. The County Court judge was of opinion that the defendants were not prejudiced, and that there was no intention to mislead; *held*, that the notice was good. The notice was posted, though not in a registered letter, the day before the expiration of six weeks from the accident, and a reply was received from the defendant's solicitors a few days after. *Held*, that there was evidence from which the County Court judge might find that the notice was received within the six weeks.—*Previdi v. Gatti*, 58 L.T. 762; 36 W.R. 670. See Libel, p. 117, vi.

**Mayor's Court:—**

- (iii.) **Q. B. D.**—*Jurisdiction.*—An order to make certain bets was sent by telegraph from the plaintiff without the city of London to the defendant within the city, and the defendant telegraphed from the city that the order had been executed. *Held*, that there was a contract of agency made within the city, and that the Mayor's Court had jurisdiction in an action for breach of such contract.—*Cowan v. O'Connor*. L.R. 20 Q.B.D. 640; 57 L.J. Q.B. 401.
- (iv.) **Q. B. D.**—*Jurisdiction—Carry on Business.*—A clerk to a solicitor whose office is in the city of London does not carry on business within the city within the meaning of the Mayor's Court Act, 1857, s. 12.—*Lewis v. Graham*, L.R. 20 Q.B.D. 780; 57 L.J. Q.B. 376; 36 W.R. 574.

**Middlesex Registry:—**

- (v.) **C. A.**—*Attesting Witness—Execution by Grantor or Grantee—Commissioner to Administer Oath—7 Anne, c. 20, s. 15—15 & 16 Vict., c. 80—16 & 17 Vict., c. 78, s. 2.*—Decision of Q. B. D. (see Vol. 13, p. 13, viii.) affirmed.—*Reg. v. Lord Truro*, 36 W.R. 775. See Notice, p. 124, i.

**Mines:—**

- (vi.) **C. A.**—*Waterworks—Compensation for Future Injury—Waterworks Clauses Act, 1847, ss. 6, 25.*—Decision of Q. B. D. (see Vol. 13, p. 45, v.) reversed.—*Holliday v. Mayor of Wakefield*, L.R. 20 Q.B.D. 699.

**Mortgage:—**

- (vii.) **Ch. D.**—*Foreclosure—Parties—Glebe.*—A vicar mortgaged part of his glebe under statutory powers. *Held*, that the patron was not a necessary party to a foreclosure action.—*Goodden v. Coles*, 36 W.R. 828.
- (viii.) **Ch. D.**—*Practice—Foreclosure—Receiver.*—Judgment for foreclosure absolute ends a foreclosure action, and therefore an equitable mortgagee, plaintiff in a foreclosure action, cannot obtain a receiver after such judgment, even though the conveyance has not been settled.—*Wills v. Luff*, L.R. 38 Ch. D. 197; 57 L.J. Ch. 563; 36 W.R. 571.

- (i.) **Ch. D.**—*Reversionary Interest in Land—Foreclosure—Statute of Limitations*—37 & 38 Vict., c. 57, ss. 1, 2.—The mortgagee of a reversionary interest in land may bring an action for foreclosure at any time within twelve years from the date at which the reversion falls into possession.—*Hugill v. Wilkinson*, 36 W.R. 633.
- (ii.) **Ch. D.**—*Goodwill of Business—Foreclosure—Form of Order*.—Where a mortgaged property included the goodwill of a business, and a receiver and manager had been appointed in a foreclosure action, a proviso was inserted in the order for foreclosure to the effect that any person redeeming, or, in the event of foreclosure, the plaintiff, should be at liberty to apply in chambers for payment of any money in court, or in the hands of the receiver.—*Smith v. Pearman*, 58 L.T. 270; 36 W.R. 681.
- (iii.) **Ch. D.**—*Frame of Deed applicable to Freeholds—Copyhold Strip—General Words*.—By a mortgage deed the mortgagor granted in fee simple "all the estate, right, title, property and interest of the mortgagor of and in all and every those two fields or parcels of land containing about 22 acres situate at and abutting on the main road, Mill Hill, Hendon, &c., and bounded on one side by Burton Lane, and also of and in all and every other, if any, the land, &c., at Hendon, of in or to which the mortgagor hath any estate, right, title, property, or interest." The two fields were freehold, and were separated from Burton Lane by a copyhold strip of about three-quarters of an acre, of which the mortgagor owned two undivided thirds, and which with the fields made up nearly 22 acres. *Held*, that the copyhold strip passed by the general words.—*Early v. Rathbone*, 58 L.T. 517.
- (iv.) **Ch. D.**—*Person entitled to Redeem—Tenant for Years*.—A tenant for years under an agreement with the mortgagor has an interest in the land which entitles him to redeem the mortgage.—*Tarn v. Turner*, 57 L.J. Ch. 452; 58 L.T. 558.
- (v.) **Ch. D.**—*Release by Parole—Absence of Consideration—Handing over Mortgage Deeds*.—A delivery by the mortgagee to the mortgagor of the mortgage deed without consideration, does not effectually release the mortgage debt.—*Hancock v. Berrey*, 36 W.R. 710.
- (vi.) **C. A.**—*Share of Profits—Bovills Act, s. 5—Loan or Partnership*.—S., the sole contractor for railway works, borrowed money from the plaintiff on security of a mortgage of the contract. The mortgage provided that the plaintiff should receive a share of profits, and empowered him in certain events to take possession of the works. *Held*, on the bankruptcy of S., that the plaintiff was not prevented by Bovill's Act from enforcing his security; *held*, also, that there was no partnership between S. and the plaintiff. Decision of Ch. D. (see Vol. 12, p. 36, iv.) reversed.—*Badeley v. Consolidated Bank*, L.R. 38 Ch. D. 238; 57 L.J. Ch. 468; 36 W.R. 745.

*See Limitations*, p. 118, vii. *Bill of Sale*, p. 104, ii., iii.

### **Municipal Election:—**

- (vii.) **H. L.**—*Duty of Returning Officer—Disqualification*—35 & 36 Vict., c. 88, s. 2—45 & 46 Vict., c. 50, s. 87.—The returning officer at a parliamentary or municipal election must declare the election of the candidate who has received the majority of good ballot papers. He cannot decide whether a duly nominated candidate is or is not disqualified. A candidate at a municipal election claiming to be elected on account of the disqualification of the other candidate, who had the majority of votes, must raise the question by petitioning against the

return, and not by applying for a mandamus to the mayor to receive his vote as a councillor.—*Pritchard v. Mayor of Bangor*, 57 L.J. Q.B. 313; 58 L.T. 502.

**Naturalisation :—**

- (i.) **Ch. D.**—*Alien—Naturalisation Act, 1870, s. 7—Infant—Guardian.*—B., a Frenchman, in 1871 obtained a certificate of naturalisation, with the qualification “that he shall not, when within the limits of the foreign state of which he was a subject previously to his obtaining his certificate of naturalisation, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.” B. married an Englishwoman. Two children were born in Paris. B. died in France in 1886. *Held*, that the children were French subjects, and that the Court could not appoint a guardian.—*Re Bourgoise*, 58 L.T. 431.

**Negligence :—**

- (ii.) **Ch. D.**—*Builder's Liability—Metropolitan Building Act, 1855, ss. 3, 82, 83, 88, 89, 94, 97.*—The Metropolitan Building Act does not exonerate a builder from liability for damage done to neighbouring houses by his operations, if such damage arises from his negligence and want of care and skill.—*White v. Peto Brothers*, 58 L.T. 710.
- (iii.) **Q. B. D.**—*Duty towards Licensee—Want of Ordinary Care.*—The defendant's horse by the negligence of the defendant's servant ran away, and turned from the highway into the defendant's yard. The plaintiff's wife, who was paying a visit to the defendant's house, ran into the yard to see what was the matter, and was injured by the horse. *Held*, that there was no duty on the part of the defendant to use ordinary care, and that no action was maintainable.—*Tolhausen v. Davies*, 57 L.J. Q.B. 392.
- (iv.) **C. A.**—*Estoppel—Corporation Seal—Unauthorized Use of—Proximate Cause of Loss.*—A corporation left its common seal in the sole custody of its clerk, who by the fraudulent use of the seal procured the transfer of, and misappropriated, stock in the public funds belonging to the corporation; *held*, that assuming the corporation to have been negligent, such negligence was not the proximate cause of the loss of the stock and did not estop the corporation from recovering its value as having been wrongfully transferred by the defendants.—*Mayor of the Staple v. Bank of England*, L.R. 21 Q.B.D. 160.
- (v.) **P. C.**—*Nervous Shock from Fright—Damages too Remote.*—The gate-keeper of a railway company negligently invited the plaintiff to drive over a level crossing at a dangerous time; there was no actual collision, but the plaintiff suffered from a nervous shock from fright. *Held*, that damages could not be recovered against the company.—*Victorian Railway Commissioners v. Coultas*, L.R. 13 App. Cas. 222; 57 L.J. P.C. 69; 58 L.T. 390.
- (vi.) **Q. B. D.**—*Volenti non fit Injuria—Finding of Fact—Inference for Court.*—Where a defendant in an action for negligence relies on the doctrine of “volenti non fit injuria,” he must obtain a finding at the trial that the plaintiff voluntarily undertook the risk with full knowledge of the danger. The Court will not give judgment for the defendant on the ground that such a finding is the only proper inference from the facts.—*Osborne v. L. & N. W. R.*, 86 W.R. 809.

**Notice :—**

- (i.) **Ch. D.**—*Middlesex Registration—Unregistered Will—Agent.*—Lands in Middlesex were devised by a will which was not registered. The heir-at-law of the testatrix, who knew of the will, mortgaged the lands to secure debts of his own. He acted as agent for the mortgagees in the transactions, and registered the mortgages. *Held*, that the mortgages were affected by the notice which their agent had of the will, and that they had not priority over the devisees. — *Hollingworth v. Weir*, 58 L.T. 792.

**Partition :—**

- (ii.) **Ch. D.**—*Sale—Application by Owner of Less than a Moiety—Discretion of Court—Partition Act, 1868, s. 5.*—Upon the application for a sale by the owner of less than a moiety of the property, the Court will not direct a sale unless the applicant shews good reason for it, even though none of the other persons interested undertake to purchase the applicant's share.—*Richardson v. Feary*, 36 W.R. 807.

**Partnership**, see Mortgage, p. 122, vi.

**Patent :—**

- (iii.) **Q. B. D.**—*Action to Restrain Threats—Action for Infringement—Application to Amend Specification—"Pending Legal Proceedings"—Patents, Designs and Trades' Marks Act, 1883, ss. 18, 19, 32.*—An action was commenced to restrain a patentee from threatening legal proceedings. The patentee commenced a cross-action for infringement. He obtained a judge's order giving liberty to apply to the Comptroller-General of Patents for leave to amend his specification by way of disclaimer. *Held*, that the judge had jurisdiction to make the order although the first action had not been concluded.—*In re Hall*, L.R. 21 Q.B.D. 137.
- (iv.) **Ch. D.**—*Threats—"Without Prejudice"—"Legal Right"—Validity of Patent—Similar Inventions—Priority—True Inventor—Master and Servant—Misleading Specification.*—A letter written "without prejudice," alleging infringement and threatening proceedings if infringement is continued is a threat. Words to the same effect at an interview which has been arranged "without prejudice," are also threats. In an action to restrain threats the mere production by the patentee of his letters patent does not prove his "legal right;" he must support their validity. The grant of letters patent to two persons for similar inventions does not decide how far the inventions are identical. In the case of two grants to different persons for the same invention the Court is not bound by the dates of the patents, nor by the fact that the patentees had contested their claims to priority before the law officers. Where the firm of P. and S. employed E. as their chemist, E. working in their laboratory and with their materials, assisted by P. who was a scientific chemist, *held*, that a chemical discovery made in the course of their experiments, the discovery being principally made by E., belonged to P. and S., and that they rightly described themselves as the first inventors on applying for protection. Where a specification claimed the use of a chemical substance in either the A. or B. form, and it is proved that for commercial purposes the use of the A. form is worthless, *held*, that the patent failed.—*Kurtz v. Spence*, 58 L.T. 438.
- (v.) **C. A.**—*Practice—Disclaimer Pending Action for Infringement—Terms of Giving Leave—Patents, Designs, and Trade Marks Act, 1883, s. 19.*—Pending an action for infringement of several patents, leave was given

to the plaintiffs to apply to amend one of the specifications by way of disclaimer, and to give the amended specification in evidence, on the terms of the plaintiffs paying all the costs of the action up to the time of leave being given, and waiving all claim to recover damages for infringements prior to the amendment.—*Gaulard v. Lindsay*, L.R. 38 Ch. D. 38.

- (i.) **C. A.**—*Objections to Patent—Particulars—Discovery.*—The plaintiffs, suing to restrain threats of proceedings, alleged that the defendants' patents were invalid. The defendants had not specified which patents they alleged to be infringed. *Held*, that the plaintiffs ought not to be obliged to deliver particulars of objections till the defendants had given a list of the patents on which they intended to rely. *Held*, that the defendants ought also to state that they relied on no other patents but those in the list; and that the plaintiffs ought to undertake, when the list had been delivered, to amend their statement of claim so as to define the patents which they said were invalid.—*Union Electrical Power and Light Co. v. Electrical Storage Co.*, L.R. 38 Ch. D. 325.
- (ii.) **Ch. D.**—*Petition for Revocation—Person entitled to present Petition—Grounds of Objection—Patents, Designs, and Trade Marks Act, 1883, s. 26.*—A person who is entitled to petition for the revocation of a patent may rely on any lawful ground to prove its invalidity. Therefore, a person who petitions on the ground that he has used the alleged invention prior to the date of the patent, may also rely on prior user by other persons.—*In re Morgan's Patent*, 58 L.T. 713.

### Pledge:—

- (iii.) **Ch. D.**—*Validity—Delivery—Bills of Sale Acts.*—Where there is a valid pledge the Bills of Sale Acts have no application although there is a document regulating the rights of the parties. Delivery is essential to a pledge, but need not be contemporaneous with the advance of money. A. agreed to advance money to B. on security of goods to be deposited in a room of which A. was to have control. B. deposited the goods in a room, of which he gave the key to C., who was employed by B. to catalogue the goods, the catalogue being to some extent for the convenience of A. B. informed A. that C. "has the key, which I place entirely at your disposal." *Held*, to be a good constructive delivery, although B. subsequently had access to the room, and exercised various acts of control over the goods.—*Hilton v. Tucker*, 36 W.R. 762.

### Poor Law:—

- (iv.) **Q. B. D.**—*Contribution to Rural Sanitary Authority—Valuation List—Precept to Overseers—Warrant of Justices—Discretion—2 & 3 Vict., c. 84—25 & 26 Vict., c. 103.*—The guardians of a union received sums from the overseers of a township in the union under precepts based on the existing valuation list. It was subsequently decided, on an appeal by ratepayers in the township, that the valuation in the list was too high. The overseers did not appeal from the valuation list, but, having refunded the amount overpaid by the ratepayers, claimed credit for the excess paid to the guardians. *Held*, that the guardians might give credit for the amount overpaid by the overseers, and that the Justices might refuse to enforce by distress the guardians' precept for a general rate levied on the old valuation list, when such sums had already been paid in excess by the overseers.—*Tynemouth Guardians v. Backworth Overseers*, 57 L.J. M.C. 53.



- (i.) **Q. B. D.**—*Rating—Metropolis—Provisional List—Valuation (Metropolis) Act, 1869, s. 47.*—An appeal does not lie to special sessions from the determination of the assessment committee on an objection to a provisional list. — *Fulham Assessment Committee v. Wells*, L.R. 20 Q.B.D. 749.
- (ii.) **Q. B. D.**—*Rating—Distress Warrant—Rate for Lands not in Occupation of Person Assessed.*—Where a person is rated for property part of which is not in his occupation, but the part actually occupied by him fulfils the description on the rate-book, the justices are bound to enforce the rate by a distress warrant, the objection being a matter of appeal, and the rate being good on the face of it.—*Overseers of the Poor of Manchester v. Headlam and L. & N. W. R.*, L.R. 21 Q.B.D. 96.
- (iii.) **Q. B. D.**—*Liability to make good Deficiency in Poor Rate—County Rate—Borough Rate—County Rates Act, 1852, s. 26—Municipal Corporations Act, 1882, s. 145.*—Where a company has become liable to make good a deficiency in poor rates caused by their taking lands under their powers, the county rate, and, in the case of a parish wholly within a borough, the borough rate, ought to be included in the poor rate in calculating the deficiency.—*Farmer v. L. & N. W. R.*, L.R. 20 Q.B.D. 788; 36 W.R. 590.
- (iv.) **C. A.**—*Settlement—Child—Emancipation—Widowed Mother—Divided Parishes Act, 1876, ss. 34, 35.*—A child of sixteen can acquire a settlement, whether emancipated or not. The three years residence counts from his attaining sixteen, and till the end of that time he retains his father's settlement, unless he has a widowed mother, who, while a widow, acquires a settlement in her own right. A widow remarried does not communicate to her child by the first marriage the settlement of her second husband.—*Highworth and Swindon Guardians v. Westbury Guardians*, L.R. 20 Q.B.D. 597; 57 L.J. M.C. 33.
- (v.) **C. A.**—*Derivative Settlement—Retention after Sixteen—Divided Parishes Act, 1876, s. 35.*—A pauper over sixteen, not having acquired a settlement of her own, retains the settlement she acquired from her father when under sixteen.—*Dorchester Guardians v. Poplar Guardians*, L.R. 21 Q.B.D. 88; 36 W.R. 706.

### Power:—

- (vi.) **Ch. D.**—*Jointure—Bargain for Benefit of Third Party.*—W. having, under his father's will, power to appoint £200 a year as a jointure, agreed with his wife to execute the power, on condition of her assigning £60 a year out of the annuity to a third person. The appointment was executed, but the wife refused to execute the assignment, and claimed a declaration that the appointment was good to the extent of £140 a year. *Held*, that the deed of appointment was an escrow, being intended to take effect only on the assignment by the wife.—*Whelan v. Palmer*, 36 W.R. 587.

### Practice:—

- (vii.) **Ch. D.**—*Adding Plaintiff—Consent—R.S.C., 1883, O. xvi., rr. 2, 11.*—When a cestui-que-trust applies to amend by adding his trustee as co-plaintiff in an action in respect of the trust property, the trustee's consent must be obtained in accordance with the general rule.—*Besley v. Besley*, L.R. 37 Ch. D. 648; 57 L.J. Ch. 464; 58 L.T. 510; 36 W.P. 604.

- (i.) **C. A.**—*Appeal*—"Criminal Cause or Matter"—*Habeas Corpus*—*Extradition*—*Extradition Act*, 1870.—The decision of the Queen's Bench Division on an application for a writ of *habeas corpus* by a person who has been committed to prison as a fugitive criminal accused of an extradition crime, is given in a "criminal cause or matter," and is not subject to appeal.—*E. p. Alice Woodhall*, L.R. 20 Q.B.D. 832; 36 W.R. 655.
- (ii.) **C. A.**—*Appeal*—*Further Evidence*—*Interlocutory Order*—*Cross-examination*—R.S.C., 1883, O. lviii., r. 4.—Appeal from refusal of the Court below to issue a writ of sequestration against the defendants for breach of an injunction. *Held*, that the order was an interlocutory one, and that the appellants had a right to adduce fresh evidence without leave; *held*, under the circumstances, that the respondents should have time to file evidence in reply, and that both parties should have an opportunity of cross-examination. — *Spencer v. Ancoats Vale Rubber Company*, 58 L.T. 363.
- (iii.) **Q. B. D.**—*Costs*—*Evidence*—*Discontinuance*—R. S. C., 1883, O. lxxv., r. 27 (9).—The master may, in his discretion, allow the defendant the costs of obtaining evidence, though the plaintiff has discontinued his action before notice of trial.—*Windham v. Bainton*, 36 W.R. 832.
- (iv.) **Q. B. D.**—*Costs*—*Indictment of Corporation*—*Conviction*—*Fine*.—Where on the conviction of a corporation on an indictment removed by *certiorari* into the Crown side of the Queen's Bench Division, a fine is to be imposed, the fine must be commensurate with the offence, and the Court will not take into consideration the costs incurred by the prosecution.—*Reg. v. L. & N.W.R.*, 58 L.T. 771.
- (v.) **P. D.**—*Costs*—*Intervention of Queen's Proctor*—20 & 21 Vict., c. 87, s. 34; 23 & 24 Vict., c. 144, s. 7.—The Court refused to condemn a co-respondent who had not been dismissed, in the costs of an unsuccessful intervention by the Queen's Proctor.—*Blackhall v. Blackhall*, L.R. 13 P.D. 94.
- (vi.) **C. A.**—*Costs*—*Solicitor and Client Costs*.—Decision of Ch. D. (see Vol. 13, p. 84, ii.) affirmed.—*Andrews v. Barnes*, 50 L.T. 748; 36 W.R. 705.
- (vii.) **C. A. & Q. B. D.**—*County Court*—*Power to Remit Action*—*Reduction of Claim below £50*—*County Court Act*, 1856, s. 26.—Where a claim indorsed on a writ exceeds £50, but is reduced to less than £50 by payment of part of the claim in obedience to a judgment under Ord. xiv., the district registrar has jurisdiction to remit the action to the County Court.—*Gray v. Hopper*, L.R. 21 Q.B.D. 15; 36 W.R. 716 & 746.
- (viii.) **Ch. D.**—*Default of Pleading*—*Motion for Judgment*—*Reference to Document*—R.S.C., 1883, O. 27, r. 11.—In his statement of claim for specific performance the plaintiff craved leave to refer to the agreement, and described the property by reference thereto. The defendant made default in pleading. *Held*, on motion for judgment, that the Court could not look at anything beyond the pleadings, that the property was not sufficiently described, and that the statement of claim must be amended and served again. — *Smith v. Buchan*, 58 L.T. 710; 36 W.R. 681.
- (ix.) **C. A.**—*Discovery*—*Production of Documents*—*Unsealing sealed Documents*.—Decision of Ch. D. (see Vol. 13, p. 85, i.) affirmed.—*Jones v. Andrews*, 58 L.T. 601.



- (i.) **Ch. D.**—*Discovery—Privileged Documents—Shorthand Notes of former Action.*—W. was lessee of a coal mine. After W.'s death an action was brought against his executors by a company which worked adjoining mines, part of which belonged to W.'s lessors, for damage done to that part of their mine by floods caused by W.'s improper working. On behalf of the executors, shorthand notes of the proceedings were taken. The lessors afterwards made a claim in the administration of W.'s estate for damage done by the floods to the mine worked by the company. *Held*, that the shorthand notes of the proceedings in the former action must be produced.—*Robson v. Worswick*, L.R. 38 Ch.D. 370; 36 W.R. 685.
- (ii.) **Ch. D.**—*Discovery—Privilege—Company—Shareholder's Action.*—In a shareholder's action against a company the plaintiff is entitled to discovery of professional communications between the company and its legal advisers relating to the subject matter of the action, when such communications are paid for out of the funds of the company.—*Gourand v. Edison Telephone Co.*, 57 L.J. Ch. 498.
- (iii.) **P. D.**—*Divorce—Undefended Action—Identity of Co-respondent.*—In an undefended divorce action the co-respondent must be proved at the trial to be the person served with the citation, unless an order has been obtained for leave to proceed without making a co-respondent.—*Duff v. Duff*, 58 L.T. 389.
- (iv.) **P. D.**—*Divorce—New Trial—Misdirection—O. xxxix., r. 3.*—When a new trial is applied for on ground of misdirection, the notice should state the particulars of the alleged misdirection.—*Taplin v. Taplin*, L.R. 13 P.D. 100.
- (v.) **Ch. D.**—*Evidence—Adjourned Summons—Evidence Filed after Hearing by Chief Clerk.*—When a time has been fixed for the filing of evidence to be used on the hearing of a summons by the chief clerk, evidence filed after such hearing cannot be used on the adjournment of the summons into Court.—*Chifferiel v. Watson*, 36 W.R. 806.
- (vi.) **C. A. & Q. B. D.**—*Evidence—Commission to Examine Witnesses—R.S.C., 1883, O. xxxvii., r. 5.*—A commission to examine witnesses abroad will not be granted *ex debito justitiæ*, but only on good cause shewn; the grounds of the application will be more strictly examined when the plaintiff applies for a commission to examine himself.—*Coch v. Allcock*, L.R. 21 Q.B.D. 1; 36 W.R. 747.
- (vii.) **Ch. D.**—*Joinder of Two Causes of Action—Irregularity—Time for Objection—R.S.C., 1883, O. xviii., r. 2; O. lxx., r. 2.*—An action was commenced for administration of an estate. The plaintiffs afterwards, without leave, amended their statement of claim by asking that one of the defendants might be ordered to give up possession of land part of the estate. *Held*, that the defendant ought to apply at once to set the pleadings right, and that it was too late to object at the trial to the irregularity.—*Derbon v. Collis*, 58 L.T. 519; 36 W.R. 667.
- (viii.) **Q. B. D.**—*Judgment—Motion for—Default—Defence to Counter-claim—R.S.C., 1883, O. xxvii., r. 11.*—Where the plaintiff fails to put in a reply and defence to a counter-claim, and the action is dismissed for want of prosecution, the defendant must move for judgment on the counter-claim.—*Higgins v. Scott*, L.R. 21 Q.B.D. 10; 58 L.T. 388.
- (ix.) **C. A.**—*Judge's Notes—Shorthand Notes.*—Where oral evidence taken in the Court below has to be considered on appeal, the appellant must apply to one of the Judges of Appeal to ask the Judge of the Court

below for a copy of his notes, and if this is not done the appeal will be ordered to stand over at the appellant's expense. The Court of Appeal will not allow shorthand notes of evidence taken by a clerk of one of the solicitors in the action to be referred to.—*Ellington v. Clark*, L.R. 38 Ch. D. 332.

- (i.) **Ch. D.**—*Life Assurance Company—Payment out of Deposit—Statement in Petition—Life Assurance Companies Acts, 1870, 1871, & 1872.*—A petition by a life assurance company for payment out of Court of its statutory deposit ought to state the Board of Trade rule which provides for such payment out.—*Re Le Phenix*, 58 L.T. 512.
- (ii.) **Ch. D.**—*Money Found Due—Motion for Payment—R.S.C., 1883, O. lv., r. 70.*—The chief clerk, by his certificate, found that a sum was due from the defendant as an occupation rent. *Held*, that a motion by the plaintiffs that the receiver should have leave to distrain, or that the defendant should give security, ought to stand over till the certificate became binding on the defendant.—*Craven v. Ingham*, 58 L.T. 486.
- (iii.) **Ch. D.**—*Order in Chambers—Motion to Discharge—Counsel—Appeal.*—The Court cannot alter an order made by a judge in chambers, except upon a motion to discharge the order. When all parties have appeared in chambers by counsel, the chief clerk ought to give a certificate, and upon that an appeal may be made direct to the Court of Appeal.—*A. G. v. Llewellyn*, 58 L.T. 367.
- (iv.) **P. D.**—*Persons Equally Entitled to Administration—Selection.*—The selection of the fittest from amongst persons equally entitled by kinship to administration, should be made on summons before one of the registrars, and persons improperly brought into Court on motion will be allowed their costs.—*In the goods of John*, 58 L.T. 683.
- (v.) **Ch. D.**—*Partition—Sale out of Court—Evidence—Form of Judgment.*—In an action for partition or sale of real estate the shortest and least expensive way is to prove the title in court in the first instance; strict evidence not being necessary, but an affidavit by a competent person being sufficient. On the court being satisfied, by such an affidavit, that all persons interested were parties to the action and desired a sale, an order was made for sale out of court, with the usual directions as to fixing the reserved price, and the auctioneer's remuneration, and as to payment of the deposit and the rest of the purchase-money into court, —*Combe v. Vincent*, 58 L.T. 709.
- (vi.) **Q. B. D.**—*Pauper—Crown Side—R.S.C., 1883, O. xvi., r. 22—O. lxviii. rr. 1, 2.*—A person cannot be admitted to sue or defend as a pauper in proceedings on the crown side of the Queen's Bench Division.—*Mulleneisen v. Coulson*, L.R. 21 Q.B.D. 3; 58 L.T. 562; 36 W.R. 811.
- (vii.) **Ch. D.**—*Payment out—Real Estate—Affidavit of no Incumbrances.*—An application by a person claiming to be absolutely entitled for payment out of money representing real estate, should be supported by an affidavit of no encumbrances, and, *prima facie*, the applicant is the proper person to make the affidavit.—*Williams v. Ware*, 57 L.J. Ch. 497.
- (viii.) **Ch. D.**—*Payment out—Contingent Interest—Mortgage of—Service on Mortgagee.*—Where a contingent interest in a fund in court has been mortgaged, and the mortgagee has placed a stop order on the fund, the persons ultimately entitled, need not, on the death of the mortgagor before his interest vests, serve the mortgagee with their petition for payment out.—*Vernon v. Croft*, 36 W.R. 778.

- (i.) **Ch. D.**—*Payment out—Alteration of Buildings—Petition or Summons—R.S.C., 1883, O. lv., r. 2, sub-s. 7.*—Upon an application by a trustee that part of a sum in the Bank of England, being purchase-money for lands taken under the Lands Clauses Act, 1845, might be paid to him, he undertaking to apply it in improvements on the trust property, and that the balance should be invested in £3 per cent. annuities; *held*, that the application was properly made by petition.—*E. p. Mayor of Bradford; in re Hargreave's Trust*, 58 L.T. 367.
- (ii.) **Ch. D.**—*Payment Out—Petition or Summons—R.S.C., 1883, O. lv., r. 2, sub-s. 1.*—The fact that a fund in Court exceeds £1,000 is not of itself sufficient to justify a petition for payment out, if the title depends only on proof of the identity, or the birth, marriage, or death of any person.—*Bates v. Moore*, L.R. 38 Ch. D. 381; 58 L.T. 513; 36 W.R. 586.
- (iii.) **Ch. D.**—*Pleading Matter since Writ—Confession of Defence—Judgment for Costs—R.S.C., 1883, O. xxiv., r. 3.*—Defendants had delivered a further statement of defence pleading matter arising since the first statement of defence. The plaintiffs had confessed the further statement of defence, and signed judgment for costs against the defendants. The judgment for costs was set aside on terms of the defendants withdrawing their further statement of defence.—*Bridgetown Waterworks Co. v. Barbados Water Supply Co.*, L.R. 38 Ch. D. 378.
- (iv.) **P. D.**—*Probate Suit—Striking out Defendant—Use of Affidavit.*—Out of nine defendants eight had been cited and had not appeared. The ninth was resident in New Zealand and had not been served. The Court allowed him to be struck off the record. The Court allowed an affidavit to be read, which had been made on a motion in the suit by a witness who could not attend, being engaged as a witness elsewhere; the application being treated as having been made before the trial.—*Drewitt v. Drewitt*, 38 L.T. 684.
- (v.) **C. A.**—*Security for Costs—Married Woman Suing by Next Friend.*—Although a married woman suing alone cannot be ordered to give security for costs on the ground of poverty, if she sues by a next friend, security may be ordered on proof of his poverty. When a married woman has obtained a judgment by her next friend, it is too late for her to claim to sue alone.—*Stevens v. Thompson*, L.R. 38 Ch. D. 317.
- (vi.) **C. A.**—*Security for Costs—Set-off.*—A. appealed against an order in favour of B. B. died, and A. revived the action against his executor. The executor applied for security for costs of the appeal on the ground of A.'s insolvency. *Held*, that security must be given, although B. had been ordered to pay to A. the costs of a previous appeal which were of sufficient amount to be a security.—*Knight v. Gardner*, L.R. 38 Ch. D. 108; 58 L.T. 699.
- (vii.) **Q. B. D.**—*Service of Writ on Foreigner Residing out of Jurisdiction—R.S.C., 1883, O. xi., r. 6; O. lxx., rr. 1, 2.*—Service of a copy of a writ was made by leave, under a mistaken belief as to the facts of the case, on the defendant, a foreigner, residing out of the jurisdiction. The defendant did not appear, and took no steps to set aside the service, and judgment was signed four months after service of the writ. *Held*, that the defendant was not estopped by his delay from taking steps to set aside the proceedings, and that the wrongful service was not a mere irregularity.—*Hewitson v. Fabre*, L.R. 21 Q.B.D. 6; 36 W.R. 717.
- (viii.) **C. A.**—*Service out of Jurisdiction—Decision of Ch. D. (see Vol. 10, p. 114, v.) reversed.*—*Société Générale de Paris v. Dreyfus*, 58 L.T. 573; 36 W.R. 609.

- (i.) **Ch. D.**—*Service out of Jurisdiction—Charging Order*—1 & 2 Vict., c. 110, s. 14—R.S.C., 1883, O. xi., r. 1 (e) ; O. xlv., r. 1.—Leave cannot be obtained for service out of the jurisdiction of the writ in an action to enforce a charging order on shares.—*Moritz v. Stephen*, 36 W.R. 779.
- (ii.) **C. A.**—*Service out of Jurisdiction—Injunction*.—A summons by X., a Scotch manufacturer, for leave to register a trade mark, was pending in the Chancery Division, and was opposed by Y., another Scotch manufacturer, on the ground that the mark was similar to one used by Y. Y. applied for leave to issue a writ against X. for an injunction, on the ground that X. was selling his goods in England so as to lead the public to believe that they were Y.'s goods. It was alleged that it would save expense if the summons and action were heard together. *Held*, that leave ought not to be given, as an injunction in England could only be enforced against the agents of X., and not against X. himself.—*Marshall v. Marshall*, L.R. 38 Ch. D. 330.
- (iii.) **P. D.**—*Substituted Service*.—Where substituted service of a petition for divorce had been ordered to be made by service on the respondent's agents, the Court allowed substituted service of a petition for alimony *pendente lite*, and dispensed with further service on its appearing that a copy of the petition had been sent in a registered letter to the agent's address.—*Odevaine v. Odevaine*, 58 L.T. 564.
- (iv.) **C. A.**—*Special Case—Summary Jurisdiction Act, 1879, s. 33—S. J. Rules, 1886, r. 18*.—The Court has no jurisdiction to entertain a special case stated under the Summary Jurisdiction Act, 1879, s. 33, unless the directions given by the Rules of 1886 have been complied with.—*Lockhart v. Mayor of St. Albans*, 36 W.R. 800.
- (v.) **C. A.**—*Trial by Jury*—R.S.C., 1883, O. xxxvi., rr. 6, 7 (a).—In an action brought in the Chancery Division to restrain a nuisance, neither party can claim a trial by jury as a matter of right, nor is the burden thrown on the other side of shewing that the case can be tried as well without a jury; the application is to the discretion of the Court.—*Timson v. Wilson*; *Fanshawe v. London and Provincial Dairy Co.*, L.R. 31 Ch. D. 72.
- (vi.) **Q. B. D.**—*Writ — Special Indorsement*—R.S.C., 1883, O. iii., r. 6 ; O. xiv., r. 1.—Where a writ claims a sum which is in dispute, as well as payment of a liquidated demand, it is not specially indorsed so as to entitle the plaintiff to summary judgment for the liquidated demand.—*Clarke v. Berger*, 36 W.R. 809.  

See Estoppel, p. 112, iv. Mortgage, p. 121, viii.; 122, ii. Trustee, p. 138, vi.

### Principal and Agent:—

- (vii.) **H. L.**—*Custom of Money Dealers—Pledge of Securities—Authority of Agent*.—Decision of C. A. (see Vol. 12, p. 42, v.) reversed.—*Earl of Sheffield v. London Joint Stock Bank*, 58 L.T. 735.
- (viii.) **Ch. D.**—*Insurance Premiums—Commission—Mortgagee*.—Where the life of a mortgagor has been insured by the mortgagee under the agreement for the loan, and the premiums have been paid by the mortgagee's solicitor, who, as agent for the insurance office, was allowed to retain a commission, *held*, in taking the accounts in an action for redemption, that the mortgagor could not claim the commission, but must be charged the full amount of premiums paid.—*Leete v. Wallace*, 58 L.T. 577.  

See Damages, p. 111, iii. Ship, p. 135, vii.

**Principal and Surety:—**

- (i.) **Ch. D.**—*Crown Debt—Payment by Surety—Rights of Surety—Mercantile Law Amendment Act, 1856, s. 5.*—A surety who has paid a debt due to the Crown from his deceased principal debtor is entitled to stand in the place of the Crown, and to be paid out of the estate of the deceased debtor in priority to all other creditors. — *Manisty v. Churchill*, 36 W.R. 805.

**Railway: -**

- (ii.) **Ch. D.**—*Debenture Holders—Surplus Lands—Railway Companies Act, 1867, s. 23.*—The debenture-holders of a railway company have no lien over its surplus lands, nor any priority in respect thereof over other creditors.—*In re Hull, Barnsley, and West Riding Railway and Dock Co.*, 36 W.R. 827.
- (iii.) **C. A.**—*Passenger—Loss of Ticket—Right to Eject from Carriage.*—Where a passenger has lost his ticket, and declines to pay his fare over again, the company have no power to eject him from the carriage, but can only sue him for his fare.—*Butler v. M. S. & L. R.*, 36 W.R. 726.
- (iv.) **Ch. D.**—*Receiver and Manager—Construction, Maintaining, or Working Railway—Railway Companies Act, 1867, ss. 3, 4.*—A dock company after its original constitution was authorised by Act of Parliament to agree with certain railway companies for the construction, use and working of an extension railway. Under agreements so made the dock company constructed, worked, and maintained a portion of the line which passed through its property. The dock company owned its own rolling stock, and the portion of the line worked by it was worked for the purposes of through traffic, and not exclusively in connection with the dock. *Held*, that the company was “constituted” a company for the purposes, amongst others, of constructing, maintaining, or working a railway, and that a receiver and manager of its undertaking ought to be appointed on the petition of a judgment creditor.—*Clark v. East and West India Dock Company*, 58 L.T. 714.
- (v.) **Q. B. D.**—*Right of Way—Assertion of—Trespass—Claim of Right—Jurisdiction of Justices.*—At the date of the Act authorising a railway there was a public right of way over the land on which the railway was made; there were no provisions in the Act for extinguishing the right of way. *Held*, that it was still in existence. A. having crossed the railway to assert such public right of way was summoned for unlawfully trespassing so as to expose himself to danger, and for being unlawfully on the railway after receiving warning. *Held*, that the claim of right ousted the jurisdiction of the justices.—*Cole v. Miles*, 36 W.R. 784.
- (vi.) **Ch. D.**—*Stock—Forged Transfer—Limitations—Co-Executors—Companies Clauses Act, 1845, s. 20—Form of Action.*—Where stock has been transferred out of the name of a stockholder in consequence of a forged transfer, there is no cause of action against the company, and time does not begin to run, till the company has refused to register the stock in the name of the stockholder. One of two executors cannot transfer railway stock standing in their joint names. Where one of two executors by forging the name of the other has procured transfers of stock standing in their joint names, the other executor can maintain an action against the company, claiming to be registered as holder of the stock, and making the forger a co-defendant.—*Barton v. North Staffordshire Ry.*, 58 L.T. 549; 36 W.R. 754.
- See Negligence, p. 123, v.*

**Revenue :—**

- (i.) **Q. B. D.**—*Excise—Penalty—Metropolitan Magistrate—Jurisdiction—*15 & 16 Vict., c. 61, s. 1—*Customs and Inland Revenue Act, 1887, s. 4.*—A metropolitan police magistrate has jurisdiction to hear and determine informations for the recovery of excise penalties imposed by any Act of Parliament of whatever date.—*Reg. v. Ingham*, L.R. 21 Q.B.D. 47; 36 W.R. 811.
- (ii.) **C. A.**—*Customs and Inland Revenue Act, 1885—Exemptions.*—Decision of Q.B.D. (see Vol. 13, p. 19, v.) reversed.—*In re Duty on the Estate of the Institution of Civil Engineers*, L.R. 20 Q.B.D. 621; 57 L.J. Q.B. 353; 36 W.R. 598.
- (iii.) **Q. B. D.**—*Licence—"Sweets" Licence—"Foreign Wine" Licence—"Best Pale Sherry, British"—Sale of—*23 Vict., c. 27, ss. 3, 19, 21—23 & 24 Vict., c. 113, s. 21—4 & 5 Will. IV., c. 77, s. 11.—The holder of a licence for sale of sweets and made wines, who had no licence to sell foreign wine, sold a bottle of wine labelled "Best Pale Sherry, British." *Held*, that he was guilty of selling foreign wine without licence.—*Richards v. Banks*, 58 L.T. 634.

**Riparian Owner.**—See Lease, p. 117, v.

**Schoolmaster :—**

- (iv.) **Q. B. D.**—*Contract with—Breach by Parent.*—Where a parent insisted on his son visiting home contrary to the rules of the school, *held*, that the schoolmaster was entitled to refuse to take him back, and to sue the parent for the fees for the uncompleted term, the parent having broken the implied contract, that the schoolmaster should be at liberty to enforce the rules of the school.—*Price v. Wilkins*, 58 L.T. 680.

**Scotch Law :—**

- (v.) **H. L.**—*Warrandice—Liability of Executor—Act, 31 & 32 Vict., c. 101, s. 8.*—Testator appointed his wife sole executrix. He disposed to her the estates A. and B. in the event of her surviving him, and bequeathed to her the whole of his estate with the exception (*inter alia*) of the estate of M. The disposition contained a clause of warrandice. He afterwards granted a bond and disposition in security over the estates M., A., and B. *Held*, that the debt could not be entirely thrown on M. to the exoneration of A. and B., but that the widow, as executrix and personal representative, must discharge the obligation of warrandice.—*Montrose (Dowager Duchess) v. Stuart*. L.R. 13 App. Cas. 81.

**Settlement :—**

- (vi.) **Ch. D.**—*Construction—Ultimate Limitation to Next-of-Kin of Wife—Time for Ascertaining Class.*—In a marriage settlement the ultimate limitation in case of the wife predeceasing the husband, was to the persons who, under the statutes of distribution would, on the decease of the wife, have been entitled in case she had survived the husband, and had died possessed thereof and intestate. The wife predeceased the husband. *Held*, that the class to take must be ascertained at her death, not at that of her husband.—*Brown v. Cottrell*, 58 L.T. 631.
- (vii.) **Ch. D.**—*Construction—"Unmarried."*—By a marriage settlement property of the wife was settled on her for life, and after her decease, subject to a power for her to appoint to her husband for life, and to her children absolutely, on trust for her children who should attain twenty-one, and in default of children attaining a vested interest and of appointment by her, on trust for the persons who under the statutes of distribution



would at the time of her decease be entitled to her personal estate "in case she had died intestate and unmarried." The wife died before her husband, having made no appointment except to her husband for life, and leaving issue, one child, who died an infant in the husband's lifetime. *Held*, that "unmarried" meant "without ever having been married," and that the wife's brother and sister were entitled to the exclusion of the representative of the infant child.—*Blundell v. De Falbe*, 57 L.J. Ch. 576; 58 L.T. 621.

- (i.) **Ch. D.**—*Covenant to Settle After-acquired Property—Appointment.*—In a marriage settlement there was a covenant that if the wife should at one and the same time and from the same source become entitled to property of the value of £500 or upwards it should be settled. The father of the wife bequeathed the sum of £4,000 upon trust for such persons as the wife should appoint, and in default of appointment on trust for her for her separate use. The wife appointed the money to herself by nine separate appointments, made on separate days, each of less than £500. *Held*, that the £4,000 was well appointed to the wife, and was not bound by the covenant.—*Oliphant v. Gerard*, 58 L.T. 800.
- (ii.) **C. A.**—*Rectification—After-acquired Property—Wife's Power of Appointment—Agency of Wife's Father.*—A father living on affectionate terms with his daughter, is her natural agent in reference to determining the provisions of her marriage settlement, and, unless the father is taking a benefit under the settlement, there is no occasion for independent advice, beyond that of the family solicitor. Decision of Ch. D. (see Vol. 12, p. 78, iii.) reversed.—*Tucker v. Bennett*, L.R. 38 Ch. D. 1; 57 L.J. Ch. 507; 58 L.T. 650.

### Settled Estate:—

- (iii.) **C. A.**—*Improvements—Scheme—Additional Expenditure—Settled Land Act, 1882, ss. 21, 25, 26.*—Where a scheme for improvements on a settled estate has been approved of by the Court or the trustees, an expenditure beyond that estimated may be allowed out of capital, if properly incurred, and if not so large as to amount in substance to the substitution of a new scheme.—*In re Bulwer Lytton's Will*, L.R. 38 Ch. D. 20; 57 L.J. Ch. 340.
- (iv.) **Ch. D.**—*Proceeds of Sale—Incumbrance—Long Term—Settled Land Act, 1882, s. 21, sub-s. 2.*—The proceeds of sale of settled land may be applied in paying off a debt secured by the mortgage of a long term.—*Frewen v. James*, L.R. 38 Ch. D. 383.

### Ship:—

- (v.) **Q. B. D.**—*County Court Jurisdiction—Damage by Collision—County Courts Admiralty Jurisdiction Acts, 1868 & 1869.*—Damage occasioned to an object on the bank of a river by contact with the sailing gear of a vessel afloat is not "damage by collision" so as to give Admiralty jurisdiction in respect of such damage to a County Court.—*Robson v. Owner of the Kate*, L.R. 21 Q.B.D. 13.
- (vi.) **P. D.**—*Collision—Implied Agreement—Maritime Lien—Liability of Ship.*—A tug while towing the plaintiff's vessel sank her by collision. The tug was chartered by the defendants, a company. One of the terms on which the company towed vessels was that they should not be liable for damage to any vessel in tow of their tugs which were specified by name. The tug in question was not one of the named tugs. *Held*, that the plaintiff, who was a director of the company and knew of the chartering

- of the tug, must be taken to have impliedly agreed to employ the tug on the same terms as the other tugs, and that his claim was barred by the condition. By the charter-party all damages were to be on the charterer's account. *Held*, that an action *in rem* would not lie against the tug.—*The Tasmania*, L.R. 13 P.D. 110.
- (i.) **P. D.**—*Collision—Gravesend Reach—Anchorage—Position of Anchor—Thames Bye-Laws*, 1872, Arts. 15, 19, & 20.—Where a vessel meaning to moor at one of the buoys or anchor in the anchorage ground in Gravesend Reach moves from buoy to buoy, and finding them all occupied, anchors a short distance above the last buoy, she does not navigate within the anchorage ground in contravention of the Thames Bye-laws. When after passing the last buoy, she gets her anchor a-cockbill for the purpose of anchoring on finding a suitable place, and a short distance above the last buoy a collision occurs and damage is done by the anchor, such anchor is only a-cockbill during the time absolutely necessary for bringing her to anchor.—*The City of Delhi*, 58 L.T. 531.
- (ii.) **P. D.**—*Collision—Improper Abandonment—Consequential Damages*.—In an action for collision for which the defendant's vessel was to blame, it appeared that the plaintiff's vessel was improperly abandoned, whereby she sank, whereas she might have been beached. The registrar was directed in assessing damages to disallow the costs of raising her, as being the only ascertainable extra costs arising from the improper abandonment.—*The Hansa*, 58 L.T. 530.
- (iii.) **H. L.**—*Collision—Damages for Loss of Life—Improper Navigation*.—Decision of C. A. (see Vol. 12, p. 78, vi.) affirmed.—*Mills v. Armstrong: The Bernina*, L.R. 13 App. Cas. 1; 58 L.T. 423.
- (iv.) **C. A.**—*Collision—River Tees Bye-Laws*, Arts. 17, 18.—The Tees bye-laws, which provide that vessels shall keep to the starboard side of the river, and that a steamship on approaching another shall slacken speed and keep to the starboard side of the river, are to be observed even when vessels are approaching one another so as to shew their green lights to each other, and nothing except extreme necessity will excuse the breach of these rules.—*The Mary Lohden*, 58 L.T. 461.
- (v.) **Ch. D.**—*Contract of Affreightment—Conflict of Laws—Law of Flag*.—A contract of affreightment is governed by the law of the flag, and therefore stipulations in a contract for carriage by an English ship, relieving the ship from liability for damage caused by the negligence of the master and crew, are good, although they are void by the law of the country where the contract was made.—*Re the Missouri Steamship Co.; Monroe's Claim*, 38 L.T. 377.
- (vi.) **C. A.**—*Damages—Interest—Action Transferred to Admiralty Division*.—Judgment of P. D. (see Vol. 13, p. 54, vii.) affirmed.—*The Baron Aberdare; The Gertrude*, L.R. 13 P.D. 105; 36 W.R. 616.
- (vii.) **Q. B. D.**—*Insurance—Concealment—Principal and Agent*.—The plaintiffs, underwriters in Glasgow, employed Glasgow brokers to re-insure a ship. The brokers received information which tended to shew that the ship was lost. Without communicating this information to the plaintiffs, they telegraphed to their London agents stating the premium which the plaintiffs would pay. Communications followed between the plaintiffs and the London agents, and the London agents effected the re-insurance. The ship was lost. *Held*, that the policy was void on the ground of concealment of material facts by the plaintiffs' agents.—*Blackburn, Low & Co. v. Haslam*, L.R. 21 Q.B.D. 144.



- (i.) **P. D.—Mortgage—Right to Possession—Release of Ship.**—Where the registered mortgagee of a ship instituted an action *in rem* for possession, and the ship was arrested therein before the mortgage money became due and without any default on the part of the mortgagor, the Court ordered the release of the ship, being of opinion upon the facts that she was not being dealt with so as to impair the mortgagee's security.—*The Blanche*, 58 L.T. 592.
- (ii.) **P. D.—Practice—Lord Campbell's Act—O. xxvii., r. 4—Damages.**—An action for damages under Lord Campbell's Act was commenced in the Admiralty Division; *held*, that upon default in pleading by the defendant, the plaintiff was entitled to enter interlocutory judgment, and to have the damages assessed and apportioned by a jury.—*The Orwell*, L.R. 13 P.D. 80; 36 W.R. 703.
- (iii.) **P. D.—Salvage — Intention of Salvor — Mistake of Fact — Wreck — Merchant Shipping Act, 1854, ss. 450, 458.**—Where a person renders services in the nature of salvage to a vessel which he at the time *bond fide* believes to be his own by purchase or otherwise, he may, when it turns out that the vessel was not his property, claim salvage reward for such services. A person taking possession of a stranded vessel under the belief that he is the purchaser, is not obliged to give notice to the receiver as a condition to being entitled to salvage.—*The Liffey*, 58 L.T. 351.

#### Solicitor :—

- (iv.) **Q. B. D.—Action for Costs—Privilege—County Courts Acts, 1849, s. 18, & 1867, ss. 5, 34.**—Where a solicitor, as plaintiff in an action on a bill of costs commenced in the High Court, recovers less than £20, he is subject to the provisions of the County Courts Act as to costs, and has no privilege.—*Blair v. Eisler*, 36 W.R. 767.
- (v.) **Q. B. D.—Remuneration—Sale of Mortgaged Property in Bankruptcy—Solicitors' Remuneration Act, 1881—Bankruptcy Rules, 1886—Appendix, p. 2, s. 7, r. 2.**—Where mortgaged property of a bankrupt is sold in bankruptcy, the solicitor acting for the official receiver is entitled to a percentage, on the whole amount received for the property, not only on that remaining after payment of the mortgage debt.—*E. p. Harris ; in re Gallard*, L.R. 21 Q.B.D. 38; 36 W.R. 592.
- (vi.) **Ch. D.—Remuneration—Lease—Premium.**—A solicitor being employed by the lessor to prepare a lease to a company, the consideration being a rent and the allotment of 400 shares of £10 each, is not entitled to the scale fee on a premium of £4,000, the shares of the company having no market value.—*In re Hasties and Crawford*, 36 W.R. 572.
- (vii.) **Ch. D.—Costs—Scale Fees—Family Arrangement—Solicitors' Remuneration Act, rule 2, Sched. 1, part 1.**—Under a provision in a will, the testator's sons took over his real estate at a valuation, and also the assets and liabilities of his business, and gave a mortgage to the trustees for the purchase money. The same solicitors acted for all parties. *Held*, that they were not entitled to scale fees, as there had been no investigation or deduction of title.—*Re Keeping & Gloag*, 58 L.T. 679.
- (viii.) **Ch. D.—Costs—Solicitor for Defaulting Trustee.**—In order to preclude a Solicitor from accepting from a trustee payment out of the trust estate of costs incurred in the administration of the trust estate, it must be conclusively shewn that the solicitor, at the time of receiving such payment, had knowledge that the trustee had been guilty of such a breach of trust as to incapacitate him from resorting to the trust estate for the payment of such costs.—*Blundell v. Blundell*, 36 W.R. 779.

- (i.) **C. A.**—*Costs—Charging Order—Permanent Alimony—Solicitors Act, 1860, s. 28—Married Women's Property Act, 1882, s. 1, (2) (3).*—A sum secured to a wife on dissolution of marriage is not alimony, and is property in respect of which a charging order for costs can be given to her solicitor; but such order will not be given unless the solicitor makes out a *prima facie* case of inability to obtain payment otherwise. A married woman having no separate property, or only separate property subject to a restraint on anticipation, cannot, by instituting divorce proceedings be deemed to have entered into a contract, with respect to her separate property, for payment of her solicitor's costs.—*Harrison v. Harrison*, 36 W.R. 748.
- (ii.) **Ch. D.**—*Costs—Taxation—Costs of Taxation.*—Where a solicitor had accepted in full discharge of his bill a sum less than the amount of it, and on taxation one sixth of the bill having been taxed off, was found entitled to more than the amount so accepted, *held*, that he was not entitled to the costs of taxation, and that the client was not entitled to costs, as no benefit had resulted.—*Re Elwes and Turner*, 58 L.T. 580.
- (iii.) **Ch. D.**—*Investment of Client's Money—Liability—Fiduciary Relation.*—Where a solicitor receives a client's money to invest on a security to be approved of by the client, he is not liable as a trustee in case the security proves deficient, but only for negligence, if proved. It is not improper for a solicitor to advise a client who owes him money to sell or mortgage some property and pay off his debt, and the case is not altered if the purchase or mortgage money is paid or advanced by another client on the solicitor's advice; but such a transaction will be closely examined to see that the solicitor has acted in good faith. A small piece of land included in a mortgage was sold, and the mortgagee, being advised by his solicitor in good faith that the remainder of the security was sufficient, allowed the purchase money to go to a second mortgagee, for the sufficiency of whose mortgage the solicitor was responsible; on the security proving insufficient for the first mortgage, *held*, that the solicitor had not made himself liable as a trustee for the purchase money allowed to go to the second mortgagee.—*Dooby v. Watson*, 36 W.R. 764.

### Specific Performance :—

- (iv.) **C. A.**—*Agreement for Lease—Commencement of Term—Statute of Frauds.*—Decision of Ch. D. (see Vol. 13, p. 23, i.) reversed.—*Wood v. Aylward*, 58 L.T. 662.
- (v.) **Ch. D.**—*Variation of written Agreement by Parol.*—By an agreement in writing the defendant agreed to let to the plaintiff premises, which were to be built at a cost not to exceed £400, at the annual rent of £75. The defendant expended £750 in building the premises and refused to grant a lease at £75 rent. *Held*, in an action for specific performance of the agreement, that the defendant might set up as a defence a proviso made by parol, that if the cost of building exceeded £400, the rent was to be raised.—*Williams v. Jones*, 36 W R. 573.

### Stoppage in Transitu :—

- (vi.) **C. A.**—*Goods Bought for Shipment—Delivery on Board.*—Decision of Q.B.D. (see Vol. 13, p. 56, iv.) affirmed. — *Bethell v. Clark*, L.R. 20 Q.B.D. 615; 57 L.J. Q.B. 302; 36 W.R. 611.

### Succession Duty :—

- (vii.) **Ch. D.**—*Title acquired by Will or Purchase.*—By the will of X., ecclesiastical leaseholds for lives, of which Y.'s was the last, were settled upon trusts for Y. for life and then over. A. having acquired Y.'s life

interest and purchased the reversion in fee, was held to be a trustee for the persons entitled under the will of X. After Y.'s death, the equitable interests under X.'s will vested in B. *Held*, that B.'s title was, for purposes of duty, a title acquired under the will and not by purchase, and that succession duty was payable as on the death of Y.—*De Rechberg v. Beeton*, L.R. 38 Ch. D. 192; 36 W.R. 682.

### Tenant for Life :—

- (i.) **Ch. D.**—*Right to Cut Ornamental Timber*.—The plaintiff was tenant in tail in remainder, and the defendant tenant *pur autre vie* of an estate settled in 1855. At the date of the settlement there was no mansion-house on the estate, but one was acquired in 1859 by exchange under a power in the settlement. The defendant began to cut timber near the mansion-house, and the plaintiff applied for an injunction. *Held*, that there must be an inquiry what trees could be cut without impairing the beauty of the place, or the shelter given to the mansion-house as at the date of its acquisition; and that the injunction should be granted, subject to the plaintiff giving an undertaking for damages.—*Ashby v. Hincks*, 58 L.T. 557.

### Trade Mark :—

- (ii.) **C. A.**—*Special and Distinctive Words—User in Combination—Trade Marks' Registration Act, 1875, s. 10*.—A. B. was proprietor of a patent medicine which had for forty years been sold as "A. B.'s Vegetable Pain Killer," or "B.'s Vegetable Pain Killer." *Held*, that the words "pain killer" alone could not be registered as a trade mark. *Held*, also that the words were "not special and distinctive words" so as to be proper for registration.—*Re Lancaster Harbord*, 58 L.T. 695.

### Trustee :—

- (iii.) **Ch. D.**—*Investment—Contributory Mortgage*.—Where trustees are authorised to invest on real securities "in their or his names or name," it is a breach of trust to invest on a contributory mortgage.—*Webb v. Jonas*, 36 W.R. 666.
- (iv.) **Ch. D.**—*Purchase by Executor of Part of Residuary Estate*.—A., B., and C. were executors and B. and C. trustees of a will. Before the estate was wound up and the accounts settled, A. purchased from B. and C. part of the residuary estate. *Held*, that the purchase could not be justified as a sale to an executor of the object of a bequest after his assent to the bequest, and that it must be set aside.—*Harvey v. Lambert*, 58 L.T. 449.
- (v.) **Ch. D.**—*Purchase of Trust Property by Stranger—Re-purchase by Trustee—Onus of Proof*.—Where trust property is sold by a trustee for sale to a friend, with an understanding that it should be resold to the trustee, though the understanding is not embodied in a form legally binding on either party, the trustee cannot hold, as against the beneficiaries, the property when re-purchased by him. In a case of purchase by a trustee, where the facts are known to both parties, the onus of proof lies on the party impeaching the transaction.—*Postlethwaite v. Rickman*, 36 W.R. 808.
- (vi.) **Ch. D.**—*Order for Payment of Income*.—It is not desirable as a general rule to order payment of income to trustees, "or either of them," according to the form in *Seton on Decrees*.—*Carr v. Carr*, 36 W.R. 688.

**Vendor and Purchaser:—**

- (i.) **Ch. D.**—*Agreement for Sale of "Interest in a Lease"*—*Title to Under-Lease*.—A vendor agreed to sell "all his interest in the lease held by him of A." *Held*, that the purchaser could not refuse to accept an under-lease for a term three days shorter than the original lease.—*Waring v. Scotland*, 36 W.R. 756.
- (ii.) **Q. B. D.**—*Implied Covenant—Incumbrances—Expenses of Paving Street—Metropolis Management Act, 1862, s. 77*.—The apportioned expenses of paving a new street are not a charge on the property in respect of which they are payable, and therefore if the owner sells while the expenses are unpaid, and conveys as beneficial owner, the purchaser cannot recover the expenses from him under his implied covenant against incumbrances.—*Egg v. Blayney*, L.R. 21 Q.B.D. 107.
- (iii.) **Ch. D.**—*Lien for Unpaid Purchase Money—Bill of Sale—Trade Machinery—Bills of Sale Act, 1878, ss. 4, 5—Bills of Sale Act, 1882, ss. 8, 9*.—A sale of a mill and machinery provided that a mortgage should be executed for part of the purchase money, which should empower the vendors, in case of the purchasers stopping business, to re-enter and take possession of the premises and of everything which should have been placed therein, "and which should not require registration under the Bills of Sale Act, 1878," without prejudice to the liability of the purchasers for the unpaid purchase money. The agreement was not registered as a bill of sale. No mortgage was executed. The purchasers having stopped business the vendors took possession. *Held*, that the unpaid vendors' lien was excluded by the agreement for security. *Held*, also, that the vendors could not retain possession of the trade machinery, which was not within the agreement.—*Re London and Lancashire Paper Mills Co.*, 58 L.T. 798.
- (iv.) **Ch. D.**—*Misstatement of Value—Compensation*.—Where property was described in the particulars of sale as of the "estimated annual value of £400," and turned out to be worth only £200 per annum, the purchaser was *held* not entitled to compensation under a condition of sale providing for compensation for errors, there being no allegation that the estimate was dishonest.—*In re Hurlbalt & Clayton's Contract*, 57 L.J. Ch. 421.
- (v.) **Ch. D.**—*Special Condition—Limited Title—Incumbrance—Discharge of*.—A vendor who contracts to sell only such right or interest, if any, as he has, is bound to convey such right or interest free from an existing incumbrance.—*Goold v. Birmingham, Dudley & District Bank*, 58 L.T. 560.
- (vi.) **Ch. D.**—*Sale under Power in Mortgage—Defect in Power—Evidence of Subsistence of Mortgage—Costs of Proceedings*.—A mortgage was made by way of conveyance on trust for sale. The deed did not provide that a purchaser need not inquire whether default had been made. *Held*, in a summons under the Vendor and Purchaser Act, that on a sale under the trust, in default of the concurrence of all the beneficiaries, proof must be given of the subsistence of the mortgage security to the date of the sale. *Held*, that under the circumstances of the case, the vendors should pay the costs of such proof as part of their costs of the summons, and that no costs of the summons should be given to either side.—*Edwards and Rudkin to Green*, 58 L.T. 789.

**Voluntary Conveyance:—**

- (vii.) **P. C.**—*Creditors—Purchase for Value—13 Eliz., c. 5—27 Eliz., c. 4*.—M. conveyed his real estates to trustees to sell and pay his debts and hold the surplus on trust for his wife and children. All the creditors

were paid except two, who were not known to the trustees. They afterwards recovered judgment against M., and execution was issued on one judgment, under which M.'s land was sold to the plaintiff. *Held*, that the conveyance by M. could not be set aside either as intended to defeat creditors, or as being void against a subsequent purchaser.—*Godfrey v. Poole*, 58 L.T. 685.

### Warranty:—

- (i.) **Q. B. D.**—*Sale of Horse—Condition for Return—Horse Disabled—Non-return.*—On the sale of a horse warranted quiet to ride, there was a condition that unless the horse was returned on the second day after the sale, there should be no right to claim for breach of the warranty. The horse on trial fell, and was so injured that it could not safely be returned on the second day. The purchaser gave notice that it was not according to warranty, and was unfit to travel. *Held*, that the non-return, under the circumstances, was not a bar to an action in the warranty.—*Chapman v. Withers*, L.R. 20 Q.B.D. 824.

### Waterworks:—

- (ii.) **C. A.**—*New River Company's Act, 1852, ss. 35, 38, 39, 40, & 41—Waterworks Clauses Act, 1847—House—Dwelling-house—Domestic Purposes.*—Decision of Ch. D. (see Vol. 13, p. 25, vii.) reversed.—*Cooke v. New River Co.*, L.R. 38 Ch. D. 56; 57 L.J. Ch. 383.

### Will:—

- (iii.) **Ch. D.**—*Ademption—Legacy—Debt.*—A testator being indebted to his wife bequeathed to her the exact amount of his debt. He paid off the debt in his life-time. *Held*, that the legacy was adeemed.—*Gillings v. Fletcher*, L.R. 38 Ch. D. 373.
- (iv.) **Ch. D.**—*Appointment—Remoteness—Infant—Settlement—Ratification.*—A testator, in exercise of a power in his marriage settlement, appointed by will the settled funds equally between three daughters, with a proviso that if at the time of his death any of them should be unmarried, her share should be held on trust for her for life, with remainders in favour of her issue, and in default in favour of his other daughters. *Held*, that the trusts of the proviso were inseparable and were void for remoteness. A wife, married under twenty-one, after attaining that age, in pursuance of provisions in her marriage settlement, conveyed her real estate to the uses of the settlement. *Held*, that for the purpose of testing the validity of the exercise of a power with reference to the rule against perpetuities, the real estate was settled by the marriage settlement.—*Cooke v. Cooke*, L.R. 38 Ch. D. 202; 36 W.R. 756.
- (v.) **Ch. D.**—*Charitable Bequest—Mortmain—Cy-près—Debts—Personal Estate—Attorney-General.*—The Court will not decide whether a charitable gift can be carried out *cy-près* in the absence of the Attorney-General. A testator by deed-poll, enrolled, conveyed to trustees a piece of land for a hospital for ten persons. By his will he charged his real estate with his debts and funeral expenses and legacies, and gave the residue of his personal property to the trustees of the deed-poll on trust to build the hospital, to employ the income of the remainder in insurance and repairs, and paying annuities to each of the ten inmates, and to pay the balance of the income to aged poor as out-door pensioners. The deed-poll became void by the death of the testator within 12 months. *Held*, that the gift to the hospital failed, and could not be carried out *cy-près*, and that the gift of the balance of the income was void for uncertainty. *Held*, also that the legacies must be paid out

of the real estate, and that the debts and funeral expenses were chargeable on the first instance on the personalty.—*Martin v. Freeman*, 58 L.T. 538.

- (i.) **Ch. D.—Construction—Appointment—“Clear”—Residue—Expenses.**—A testatrix, under a power of appointment in her marriage settlement, appointed that the trustees of the settlement should pay to the trustees of her will so much of the trust funds as should be of the “clear value” of £1,000, on trust for A. After other appointments in similar language she appointed “the residue” of the trust funds. *Held*, that the interposition of the trustees of the will did not affect the question, and that the residue must bear all the outgoings on the prior appointments.—*Bjorkman v. Kimberley*, 36 W.R. 752.
- (ii.) **Ch. D.—Construction—Charity—Marshalling—Real Estate—Land in Colony.**—Testatrix gave her real and personal estate to trustees, on trust to convert, and to pay her debts, funeral and testamentary expenses, and certain legacies, directing that such legacies should in the first instance be payable out of the proceeds of sale of her “real and leasehold estates, if any.” She directed the residue to be divided between certain charities, and directed that the “charitable legacies” should be paid “exclusively” out of such part of her pure personal estate as was legally applicable for that purpose. She had no real or leasehold estate in this country, but had land at Cape Town, and pure and impure personalty. *Held*, that the general legacies must be paid in the first instance out of the proceeds of sale of such lands, and that the unpaid part of such legacies and the debts and funeral and testamentary expenses and costs must be paid in the first instance out of the impure personalty, so as to leave the pure personalty, as far as possible, to constitute the residue for the charities.—*Ravenscroft v. Workman*, L.R. 37 Ch.D. 637; 58 L.T. 469.
- (iii.) **Ch. D.—Construction—Clear Annuity—Legacy Duty.**—The words “clear annuity” mean an annuity free of legacy duty, and this meaning is not altered by the fact that in the gift of another “clear” annuity the testator has added the words “free of legacy duty.”—*Nelson v. Robins*, 58 L.T. 328.
- (iv.) **Ch. D.—Construction—“Household Effects”—Wine.**—Devise of testator’s house to his wife, followed by bequest to her of “all my furniture, pictures, plate, jewellery, horses and carriages, and other household effects.” *Held*, that the wine in the house was included.—*Bourne v. Brandreth*, 58 L.T. 537.
- (v.) **Ch. D.—Construction—Gift to Class of Relations—Half-blood.**—The presumption is that a gift by will to a class of relations includes relations of the half-blood, but such presumption may be overruled by the context.—*In re Reed*, 36 W.R. 682.
- (vi.) **Ch. D.—Construction—“Relations hereinafter Named”—Intestacy.**—A testator directed his property, after the death of his wife, to be divided amongst his “relations hereinafter named.” No relations were named in the will. *Held*, that there was an intestacy.—*Crampton v. Wise*, 58 L.T. 718.
- (vii.) **Ch. D.—Construction—Restraint on Alienation—Executory Gift over—Repugnancy.**—Gift of real and personal estate on trust for J., his heirs and assigns, “but if he should do, execute, commit or suffer any act, deed, or thing whatsoever whereby, or by reason, or in consequence whereof, or if by operation of law, he would be deprived of the personal beneficial enjoyment of the said premises in his lifetime,” then over. *Held*, that the gift over was void for repugnancy, and that J. was absolutely entitled.—*Dugdale v. Dugdale*, L.R. 38 Ch. D. 176; 58 L.T. 581.



- (i.) **Ch. D.—Construction—Survivor.**—Testatrix, who died in 1831, devised real estate as to one-fourth part to the use of T., with remainder to the use of his children as tenants in common in tail, with cross remainders between his children, and in default of such issue to the use of the right heirs of the testatrix. She devised the other three-fourth parts upon similar limitations in favour of three other devisees. By codicil she directed that if any of the devisees should die without leaving any child, his share should go to the “survivors or survivor,” and the heirs of his, her, or their respective bodies. Two of the devisees left issue; T. was the survivor, and had no children. *Held*, that “survivor” must be read “other,” and that T.’s share devolved on the two who left issue, as tenants in common in tail.—*Askew v. Askew*, 58 L.T. 472; 36 W.R. 620.
- (ii.) **Ch. D.—Construction—Vesting—Gift over on Death without leaving Children surviving—Loco Parentis.**—Bequest to testator’s daughter for life, remainder to her children who should attain twenty-one, with a gift over in case the daughter should die without leaving children her surviving. *Held*, that the rule that vested interests of children should not be divested by their death in their parents’ life-time, although applicable to wills as well as to supplements, was not applicable where the testator did not stand in *loco parentis* to the children. *Held*, also, that the testator was not in *loco parentis* to his grandchildren, none of whom were born in his life-time.—*Stephen v. Cunningham; re Hamlet*, L.R. 38 Ch. D. 183; 58 L.T. 614; 36 W.R. 568.
- (iii.) **Ch. D.—Deduction of Debts from Children—Debt of Daughter’s Husband—Equity to a Settlement—Separate Estate.**—A testator directed that any debts due to him from his children should be deducted from their shares. The husband of a daughter, who was in poor circumstances, was indebted to the testator in a sum greater than his wife’s share. *Held*, that the executor’s right of set-off was subject to the wife’s equity to a settlement, and that part of her share must be settled on her. *Held*, also, that a gift to children “for his, her, or their own absolute use and benefit,” did not give the daughter a separate estate.—*Poulter v. Shackel*, 36 W.R. 825.
- (iv.) **C. A.—Imperfect Testamentary Document—Donatio Mortis Causa.**—A document, intended to be a testamentary document, but imperfectly executed, cannot take effect as a *donatio mortis causa*, or as an immediate assignment of the property to which it refers.—*In re William Hughes*, 36 W.R. 821.
- (v.) **Ch. D.—Satisfaction—Covenant to Pay—Legacy—Direction for Payment of Debts.**—A husband by a separation deed covenanted that his heirs, executors, or administrators should, out of his estate, and immediately after his death, pay his wife £100 if she should survive him. There was a proviso that the payment might be made by instalments of £6 a month for six months, and the balance immediately afterwards. He afterwards made his will, in which, after his debts, etc., had been paid, he bequeathed to his wife £100, payable within six months after his death, £6 a month to be paid to her till his estate was finally settled, “the same to be deducted from the £100 as in the separation deed.” *Held*, that the wife was entitled to the sum of £100 under the deed in addition to the bequest.—*Horlock v. Wiggins*, 58 L.T. 725.
- (vi.) **Ch. D.—Lapse—Direction to Purchase Annuity—Prior Life Interest—Death of Annuitant in Life-time of Tenant for Life—Forfeiture.**—A gift of a fund, in which A. has a life-interest, on trust after the death of A. to purchase an annuity for B., lapses by the death of B. in the lifetime

of A. *Semble*, that a clause of forfeiture in a will does not take effect in case of an act of forfeiture which has been committed before the date of the will.—*In re Draper's Trust*, 36 W.R. 783.

- (i.) **Ch. D.**—*Locke King's Act—Amendment Act—Contrary Intention.*—A testator directed his private debts to be paid out of certain funds, and he bequeathed his residuary personal estate subject to the payment of his trade debts. He afterwards deposited the title deeds of real estate to secure an overdrawn trade account. *Held*, that an intention contrary to Locke King's Acts was declared, and that the devisee of the real estate was entitled to have it relieved from the charge.—*Colston v. Roberts*, L.R. 37 Ch. D. 677; 58 L.T. 624; 36 W.R. 663.
- (ii.) **Ch. D.**—*Married Woman—Appointment—Subsequently Acquired Property.*—Testatrix, a married woman, having under her marriage settlement a power of appointment, by will made in exercise of this power "and of all other powers enabling me in this behalf," appointed and bequeathed all the property comprised in the settlement "and over which I have any power of appointment or disposition by will." On the death of her husband she became entitled to real and personal estate, and made a codicil devising the real estate. *Held*, that the will did not include the subsequently acquired personal estate.—*Whitby v. Highton*, 57 L.J. Ch. 430; 36 W.R. 683.
- (iii.) **C. A.**—*Execution—Acknowledgment.*—Decision of P. D. (see Vol. 13, p. 100, i.) affirmed.—*Daintree v. Fasulo*, L.R. 13 P.D. 102; 58 L.T. 661.





# Quarterly Digest.

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